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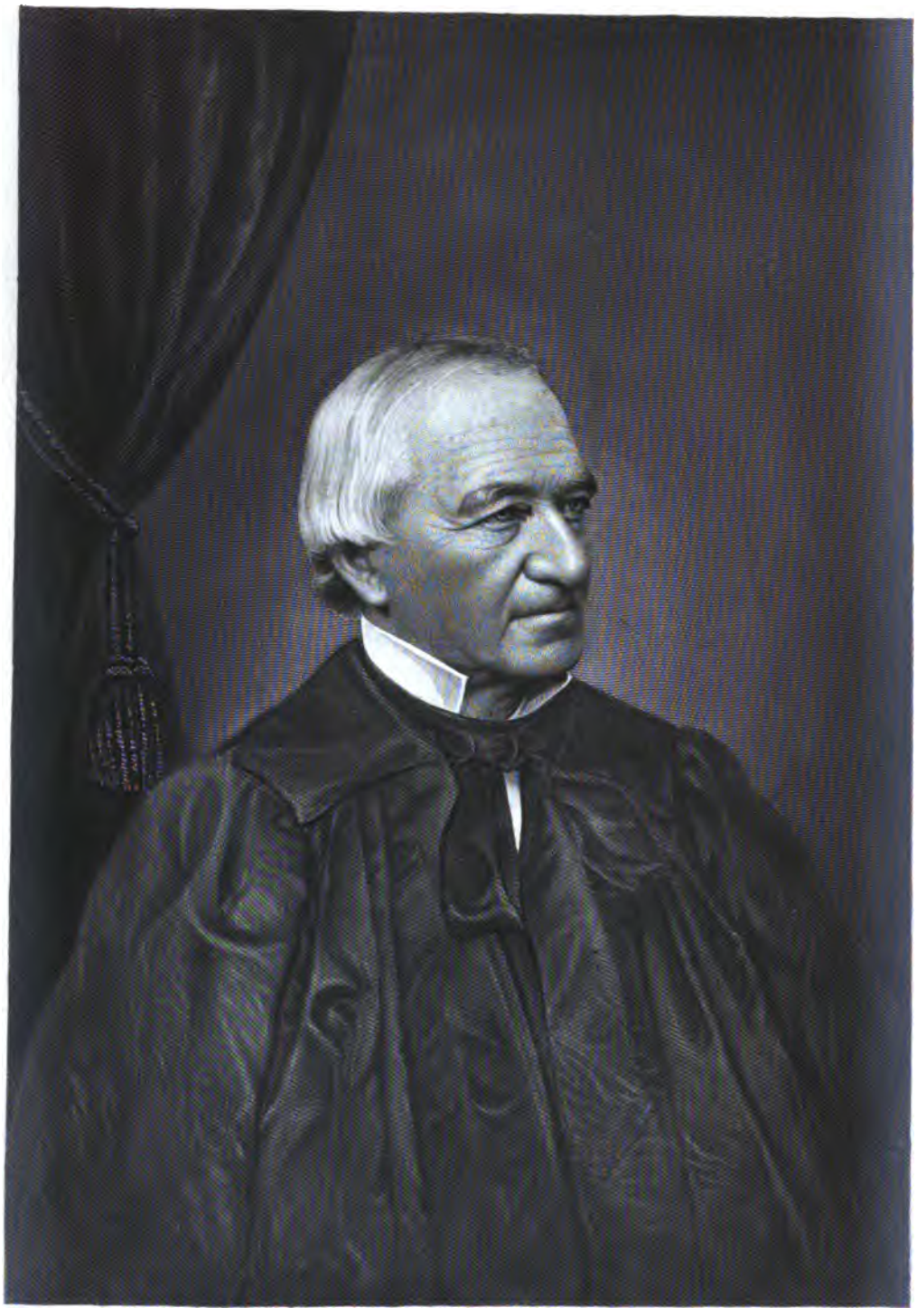

Joseph P. Bradley

# MISCELLANEOUS WRITINGS

OF THE LATE

# HON. JOSEPH P. BRADLEY,

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, WITH A SUPPLEMENT CONTAINING

AND A

## REVIEW OF HIS "JUDICIAL DECISIONS"

BY

WILLIAM DRAPER LEWIS

EDITOR OF THE "AMERICAN LAW REGISTER," OF PHILADELPHIA, PA.,

AND

## AN ACCOUNT OF HIS "DISSENTING OPINIONS,"

BY THE LATE

A. Q. KEASBEY, Esq., OF NEWARK, N. J.

EDITED AND COMPILED BY HIS SON,

CHARLES BRADLEY.

NEWARK, N. J.
L. J. HARDHAM, 213-7 Market Street
1912

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NEWARK, N. J.:
L. J. HARDHAM, 243-5 Market Street.
1902

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# PREFACE.

The death of my father, Joseph P. Bradley, on January 22, 1892, placed in my hands as his sole executor, all his papers and MSS., a large and varied collection. Appreciating its value and importance, I have been engaged for some years in examining and arranging it in convenient form, and after submission to several distinguished and learned friends of my father, I have, at their earnest solicitation, undertaken to gather together those heretofore unpublished and unspoken thoughts of his, which he habitually wrote down in all manner of memoranda, record and common-place books, as they became settled convictions of his mind.*

To these I have added such public addresses and lectures as seem pertinent to such a collection. But I have endeavored to eliminate all strictly *legal* subjects,† except the lecture before the law students of the University of Pennsylvania, it being the purpose of this volume to record in a permanent way his acquisitions in other departments of thought than the law. His legal reputation will be judged by his opin-

* See essay, "Experience or Self Improvement."

† See note to Preface.

ions from 9th Wallace to 141st United States, which, in the language of Chief Justice Fuller, "constitute a repository of statesman-like views and of enlightened rules in the administration of justice, resting upon the eternal principles of right and wrong, which will never pass into oblivion."

In presenting these thoughts of Mr. Justice Bradley, it should be borne in mind, therefore, that they include only such as are appropriate to a collection of miscellanies. Much, probably three-quarters, of the time occupied in studies distinct from those incident to the prosecution of his profession, was devoted to mathematics, his favorite subject, and the results of his thoughts and work in that department of science are found recorded in many places, whole blank books being filled and reams of paper covered with solutions and discussions of various problems, indicating profound knowledge of and familiarity with the principles of astronomical, geometrical and physical mathematics. But the very nature of the work is such as to preclude its introduction into these pages. Still certain entries in his "Records" have seemed worthy of preservation, if not for their own novelty, at least as an index to this phase of the mental acquirements of this many-sided man.

That these studies were not superficial, but deep and thorough, is evidenced by an examination of his

correspondence, in which is found the letters of expert engineers, practical mechanics and even college professors, soliciting his advice and his judgment on mechanical and scientific devices and methods.

It is evidenced, also, as applied in his dissection of complicated patent litigation before the Supreme Court of the United States, in which his pre-eminence has been so forcibly maintained by that leader among great American patent lawyers, Mr. George Harding, of Philadelphia, who says: "In that branch of law (patent), as a judge, he has never been surpassed, if he has been equalled. No matter what department of the arts was involved, mechanics, chemistry, electricity or steam engineering, he *mastered* the subject."

Still another subject to which he devoted much time and labor was genealogy.* To a complete history of his own family, with all its ramifications in this country, involving a large correspondence and personal inspection of old town records and documents in Connecticut, he added the compiling of the history of his wife's family and connections (Hornblowers, Burnets, Gouverneurs, etc.), besides the records of many collateral branches, all duly preserved in MSS., necessitating that manual and mental labor and application that so astonished those who only knew him by his work as lawyer and judge. As his

* "The Bradley Family of Fairfield." Published privately in Newark, N. J., 1894.

friend and eulogist, Hon. Cortlandt Parker, says: "I am free to say that it has not ever happened to me to meet a man informed on so many subjects entirely foreign to his profession, and informed not slightly or passably, but deeply—as it seemed, thoroughly on them all. Literature, solid or light, in poetry or prose; science; art; history, ancient and modern; political economy; hieroglyphics; modern languages, studied that he might acquaint himself with great authors in their own tongues; the Hebrew and kindred tongues, that he might perfect himself in biblical study; mathematics, in knowledge of which he was excelled by few—all these were constantly subjects of his study."

It was this all-absorbing thirst for knowledge, this determination to master and digest whatever subject came under his observation, that forced him to devote his every hour to some new acquisition, and yet without detriment to his reputation and obligations as an occupant of that great and laborious office which he held. It is fortunate that he has left us some monuments of all that study, of that great intellect. Posterity may justly accord him that niche in the history of the Supreme Court to which he is entitled. This record will preserve in some small degree the results of those hours of midnight toil—though to him a pleasure—which only his family knew of, and which it would be criminal to consign to the waste-paper basket.

Previous to Mr. Justice Bradley's ascending the Bench in 1870, he had for thirty years practiced law in Newark, N. J. While thus prosecuting his profession, he was not neglecting his duties as a citizen or refusing the benefit of his wide influence and knowledge to religious, educational and philanthropical organizations or objects. On the contrary, he was an active participant, as officer or director, in financial or other business corporations, and the frequent adviser in the affairs of educational institutions, as trustee or otherwise. Always pronounced, but not extreme in his views, he was called on to address his fellow-citizens whenever the necessities of the emergency seemed to require the peculiarly forceful and thoughtful presentation of a serious public question, with which his speeches are imbued.

We have, therefore, included some few of these addresses, as an illustration of that force which made him a power in the community. Then, turning to another mental characteristic, we present some specimens of his religious and philosophical essays and discourses—a department in which he was most happy in conveying his ideas to an audience, imparting life and interest to an otherwise heavy subject. With these there are intermingled certain miscellaneous sayings, exhibiting the versatility of his mind and accomplishments. In truth, he was the personification of

Bacon's famous epigram: "Reading maketh a full man; conference, a ready man, and writing, an exact man."

I also include in these pages the secret history of the conferences of the U. S. Supreme Court, in the form af a "Statement of Facts," signed by the majority of the Court, relating to the re-hearing and final decision of the "Legal Tender" cases, in 1870. This document, now published for the first time, should emphatically dispose for all time of the erroneous and unjust aspersions cast by some writers and publicists upon the honor and action of the Court at that time.

CHARLES BRADLEY.

NEWARK, N. J., 1900.

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NOTE.—Further reflection has produced the conviction that two papers on the judicial career of Mr. Justice Bradley could be appropriately inserted in these pages, and it is with undisguised pleasure that I have introduced them at the beginning of the volume.

The first, entitled "The Work of Mr. Justice Bradley," by William Draper Lewis, Associate Editor of *The American Law Register and Review*, of Philadelphia, Pa., and the second, "Dissenting Opinions—Mr. Justice Bradley," by A. Q. Keasbey, of Newark, N. J.

To both of these gentlemen—the latter having since passed away—I publicly acknowledge the deep sense of my obligations and gratitude.

# JOSEPH P. BRADLEY.

Joseph P. Bradley was born March 14, 1813, at Berne, Albany County, N. Y. His ancestors for generations had been farmers and, his father, Philo Bradley, followed in their footsteps. Hence his early years were passed in the laborious but healthful duties of a farmer's son. His early schooling consisted of a few months in the winter of each year at the country school-house, but his natural aptitude for learning soon exhibited itself so strongly that the attention of the Reformed Dutch minister of the parish was attracted to him, and through his instrumentality he was afforded the assistance of the church in obtaining a college education. After a short period spent in teaching school for the purpose of raising a little money, and under the tutelage of Mr. Myers, the minister above referred to, he prepared for entering Rutgers College, an institution identified with the Dutch Church, at New Brunswick, N. J. Joining the freshman class in September, 1833, he soon found himself able to enter the class above, and hence became a member of the famous class of 1836.

After graduation he secured the position of Principal of the Millstone, N. J., Academy, but not long after he was persuaded by two of his class-mates—Frederick T. Frelinghuysen and Cortlandt Parker—to go to Newark, N. J., where they resided, and accept a position in the office of Mr. Archer Gifford, a leading lawyer and at the time Collector of the Port. Arriving in Newark, November 2, 1836, he immediately

entered Mr. Gifford's office and began the study of law. The salary of his office as Inspector of Customs was sufficient to defray his expenses until his admission to the Bar, in November, 1839. In May, 1840, he formed a business connection with Mr. John P. Jackson, and from that time he had constant employment in his profession.

Marrying in October, 1844, Mary, the youngest daughter of the late Chief Justice Hornblower, of New Jersey, his home became the centre of a wide circle of friends.

Devoting himself assiduously to his profession, his ability and force soon made themselves felt and his services were sought after by the most powerful private and corporate interests of the State, until he became, admittedly, the leader of the Bar in New Jersey, and through his frequent appearance in the courts of the United States, earned even a wider, if not a national reputation.

The opportunity presenting itself, President Grant's attention was called to his pre-eminent fitness for the vacancy then existing on the Bench of the Supreme Court of the United States, and on February 7, 1870, he nominated him as an Associate Justice of that court, and his nomination was confirmed by the United States Senate, March 21, 1870.

At the mature age of 57 years, and after thirty years of active and continued pursuit of his profession, leavened with intellectual diversions in almost every scholarly path, broadened by foreign travel and in robust health, he was singularly well prepared for the burdens of his office and the discharge of its duties and responsibilities.

It was fortunate that it was so, for his associates, with whom he must cross swords in judicial conference, were concededly distinguished for their ability and reputation. Salmon P. Chase—then Chief Justice—Noah H. Swayne, Samuel Nelson, Nathan Clifford, David Davis, Samuel F. Miller and Stephen J. Field, all tested in the crucible of public life and experience—these were the men on whom he must impress the stamp of his power and force, or sink into judicial obscurity. That they were "foemen worthy of his steel," he was proud to acknowledge. That he obtained their recognition as a peer his, "Judicial Record" demonstrated. And the questions quickly coming before the Court, as the result of the war and reconstruction periods, soon gave him the opportunity to establish his position on the Bench—a status never after questioned, even amid the changing personnel of the court.

Immediately removing from Newark, he purchased the large residence, No. 201 I Street, built by Stephen A. Douglas and occupied by him till his death. Here he lived for twenty-two years, dispensing a generous hospitality and enjoying, when opportunity permitted, the social life of the Capital. Many old friends surrounded him. In the Executive Department of the Government, George M. Robeson, Secretary of the Navy, was an intimate and welcome guest at his house. In the Legislative Department were Senators John P. Stockton and Frederick T. Frelinghuysen, both old friends and contemporaries at the Jersey Bar, while the latter, more than a friend, had been his companion since college days. Thus, he and his family were soon at home in Washington and quickly became identified with its interests and life.

The circuit allotted to him, the fifth, embracing all the Southern States, except the Virginias and Carolinas, necessitated his holding Court in their principal cities every spring, and the long journeys in warm weather were a severe tax on his strength. Notwithstanding, for ten years (until his circuit was changed), he never failed every year to visit and hold Court in either Galveston, San Antonio, Houston and Dallas, Texas; New Orleans, Jackson, Mobile, Jacksonville, Savannah or Atlanta, usually alternating yearly between the Texas cities and New Orleans, and the others named.

Of course, the labor incident to this circuit work was very great, but his previous knowledge of the Civil Law, and French and Spanish jurisprudence, enabled him to dispatch it rapidly, and as he had reason to know, to the great satisfaction of the Southern Bar. This large jurisdiction widened his acquaintance and was the means of creating many warm friendships. In fact the universal courtesy which was extended to him by the citizens of the South, was a source of great gratification to him, and he was profuse (in the family circle) in his expressions of gratitude to the gentlemen who invariably entertained him at their houses. This was especially pleasing in view of his well-known Northern antecedents and opinions, and the writer has personal knowledge of his keen regrets, when his assignment to the Third Circuit became proper.

For fifteen years or more, he spent his summers at Stowe, Vermont—a small village situated in the heart of the Green Mountains—the climate of which was most healthful and invigorating, and he became de-

votedly attached to it. Generally going North late in June, he would pay short visits to his sons in Newark, and his daughter in Paterson, N. J., and then stopping at "The Kaaterskill" in the Catskills, where he enjoyed, especially, the companionship of his friend George Harding, of Philadelphia, he would make his way to Stowe and remain till October, returning directly to Washington to be present at the opening of the Fall Term of Court. At Stowe it was that he had time and leisure to pursue so many of his favorite studies, and indulge his literary taste to the full. Taking with him his choice books, he surrounded himself with the atmosphere of literature, and to my mind, passed the happiest days of his later life.

Always a great reader and lover of books, Judge Bradley had early accumulated a large and varied library, embracing nearly every department of literature, which was a source of continual pleasure and pride to him. By constant additions, this library became very great, numbering about six thousand volumes. In addition, his law library, aggregating some ten thousand volumes, filled his home to over-flowing. It is interesting to know that this law library was secured by the Prudential Insurance Company, of Newark, N. J., and is maintained complete and entire, even to the pictures on the walls, in that company's magnificent structure in that city, erected on land owned by Judge Bradley for many years, and sold to it three years before his death.

Socially, Judge Bradley was a charming companion and notwithstanding the inroads on his time, enjoyed the refined surroundings of his position. Thus officially and personally brought into contact with

men distinguished in the various pursuits of life, his social life was most interesting. A characteristic habit consisted of his drawing a diagram of the table, immediately on his return from a dinner, with the names and seats of all the guests, adding a descriptive line, explanatory of the occasion, and pasting these cards in a book, which the writer now possesses, embracing a record of one hundred and eighty-nine dinners and including, of course, only formal entertainments. This unique collection, covering a period of twenty years, gives an idea of his social surroundings, now interesting to peruse. Of course, the judicial element prevails in the guests at most of the boards, and varies with the changed personnel of the Court and Bar of the country during that period, as well as the White House circles under five administrations—Grant, Hayes, Arthur, Cleveland and Harrison. And interspersed with distinguished diplomatic, army and naval names, are those of many known throughout the world for their political, scientific or literary achievements. Here we see him seated next to George Bancroft, Lord Houghton, Lord Coleridge; there, at the same board with Archdeacon Farrar, Dr. Oliver W. Holmes, James Russell Lowell and Lord Herschell; again, the guests include Robert C. Winthrop and Mr. Joseph Chamberlain. And so on, either at his own table or as the guest of others. Such were the character of the men whom he met and talked with, and with his receptive mind the wealth and variety of information absorbed can be better imagined than described. And thus his life, though laborious to a degree, moved pleasantly along, with two celebrated exceptions.

Those were occasions which tested the metal that was in him, and his character stood the strain without developing a flaw. I refer to the Legal Tender Decision and the Electoral Commission. Subjected to the most unjust and cruel criticism, charged by ignorant journalists with almost every crime in the calendar, his nervous and sensitive nature suffered acutely. But the independent and self-reliant forces of his character—which had made him what he was—now stood him in good stead, and conscious of the rectitude of his motives and with a firm faith in the correctness of his official opinions and acts, he courageously faced all detraction, all threats, all denunciation, and stood like a rock against the impotent assaults of enraged and disappointed partisans.

The recent death of Mr. Justice Field, who was his colleague on the Supreme Court Bench at the time, releases me from a silence imposed by Judge Bradley and Judge Strong, and enables me to introduce in these pages a "Statement of Facts" relating to the order of the Supreme Court of the United States for a re-argument of the Legal Tender question in April, 1870, prepared by the majority of the Court at that time—which is an absolute refutation of the unjust imputations cast upon his action in that matter by many writers,* some of whom were inspired by partisan antipathy and others by ignorance of the facts, and which have gained currency by reason of their long exemption from challenge. As introductory to

* "The life of S. P. Chase." by J. W. Shuckers, Chapter XXVIII.
Paul Leicester Ford's edition, "The Federalist." Introduction, p XVIII.
"Congressional Government," by Woodrow Wilson. Introductory, p. XXXVIII.

the "Statement" I have, with the author's consent, quoted largely from a letter of Senator George F. Hoar, of Massachussetts, refuting the charge that President Grant had, by the appointment of Judges Bradley and Strong, "packed" the Supreme Court for the purpose of securing the reversal of the Court's decision in the case of Hepburn vs. Griswold, otherwise known as the "Legal Tender" case.

The second occasion referred to—the Electoral Commission—is briefly touched on by himself in the accompanying volume. But his account gives little idea of the bitterness of feeling then existing, and the severe ordeal through which he passed and of which I have personal knowledge. Having attended the Columbian Law School, in Washington, during the winter of 1876 and 1877, I was fully aware of the suppressed

NOTE.—Prof. Woodrow Wilson, having had his attention called, by the editor, to the inaccuracy of his statement, wrote the following very manly and satisfactory acknowledgment:

PRINCETON, N. J., December 20, 1900.

MR. CHARLES BRADLEY, Newark, N. J.:

MY DEAR SIR:—I very much appreciate your letter of the sixteenth. I have for some time been convinced of the unfair imputations of the passage to which you refer in my "Congressional Government," but I have never had an opportunity of revising the text since its publication. It has many times been reprinted, but no change has been made in any part of it since its original appearance. Stereotyped plates are regarded by publishers as a very rigid finality. The change necessary in that passage would be very considerable, and I have never had a chance to make it. I very much hope that before very long I shall be allowed to revise at least that part.

Thanking you again for thus taking it for granted that I wished to know and speak the truth,

Very sincerely yours,

WOODROW WILSON.

excitement which pervaded all classes, and when finally my father was chosen to complete the organization of the commission, he, as well as all of his family, keenly regretted that the lot had fallen to him, thereby becoming (unjustly), in a sense, the final arbiter. I say unjustly because he was by belief, by association, by past history, as staunch a Republican as any of those members of the Commission who were deliberately selected by reason of their known political predilections. And yet, he alone was expected to sink all political bias and act the judge merely. He realized fully the delicate position he occupied, and foresaw that whatever course he took would subject him to criticism. But that he would be assailed with all the venom of a serpent, that he would be charged openly with corruption, that he would be threatened with bodily injury, aye, even to the taking of his life—this he did not forsee nor believe possible. And yet such was the case. As the proceedings of the commission advanced and the probable outcome was seen, the fury of the Democratic press, led by that scorpion of journalism, the New York *Sun*, knew no bounds. And this continued vilification soon affected the excitable minds of irresponsible individuals, until he was inundated by a flood of vulgar and threatening communications which would have unnerved a less brave and courageous man.

He soon ceased to either read the press or his mail and absolutely declined to see or converse with the horde of callers at his house. As a matter of fact, he was practically a hermit from the hour he left the sittings of the commission one day until it met the next, even his family seeing him only at meals. As

an inmate of his house during the whole period of the commission's existence, I speak with authority when I say that the reports of his consultations with prominent Republicans and members of the commission are false—false not only as to the fact, but the inferences which have been drawn from these false reports, and especially that venomous statement that he had read an opinion favorable to Mr. Tilden in the Oregon case to one or two of his Democratic associates, but that over-night he had been closeted with Republican magnates and came into Court in the morning and voted and read an opinion in favor of Mr. Hayes. This statement having been credited to Judge Field, whether correctly or not, he called upon that judge to either prove it or retract it. Judge Field, then in California, wrote him saying that his remarks had been misinterpreted and exaggerated, and that he had said "nothing derogatory to his honor or integrity."

That he gave the most conscientious consideration to every point raised, and that his conclusions were irresistibly correct, is best evidenced by his opinions elsewhere printed in this volume. That he exhibited a courage not surpassed by any battle-field hero can only be appreciated by those who knew personally the bitterness of the time. That the threats against his life were not idle, and that the anxiety of his family for his personal safety was not exaggerated, became evident when we found that detectives, without solicitation or his knowledge, had been detailed by the then Secretary of the Navy to guard his house and his person. Fearless in the execution of the trust reposed in him, he had the satisfaction of living long enough to see his conduct approved by all fair-minded

men and receive the sanction of popular opinion in the condemnation of Mr. Tilden's "cypher despatch" methods and that gentleman's permanent retirement to private life. But amongst the many evidences of endorsement received by him from all over the country, none appealed to him more than a testimonial of confidence and approval tendered him by the leading professional and business men of his old home—Newark, N. J. (Note). Blessed with great vigor of body and mind, he rounded out his long career with fullness and satisfaction, ever growing in judicial strength and reputation.

The death of his eldest son, William H. Bradley, in 1889, at the time an active lawyer in his old home at Newark, N. J., was a great blow, but he showed no weakening of his powers until in the spring of 1891, when an attack of "la grippe" left him much enfeebled. He failed to recuperate his strength that summer and returned to Washington in October much debilitated. He took his seat on the Bench, however, at the opening of Court, but in a few weeks was compelled to retire by a general breaking up of his system. Fully realizing his approaching end, he calmly prepared himself and his affairs for the inevitable, and finally, peacefully passed away early on the morning of January 22, 1892, surrounded by all his family. Had he lived till March 14, he would have been 79 years old.

A man of the strongest personality—of deep feeling, tho' undemonstrative—his friendships were sincere and binding, and his family relations were most delightful.

And so ended a useful Christian life. May we emulate his sterling worth and character and strive to make as good an American citizen.

(NOTE.)

"NEWARK, N. J., March 7, 1877.

"HON. JOSEPH P. BRADLEY,

"*Justice U. S. Supreme Court.*

"DEAR SIR:—Your friends and neighbors in this community have given you their sincere sympathy in your discharge of the duties imposed upon you as the arbiter of the Electoral Commission.

"No weightier responsibility was ever incurred by any citizen than rested upon your casting vote, but your course has been watched by us with more of affectionate interest than of anxiety.

"We had a life-long assurance that whatever of so-called political bias you might make manifest would be only the expression of deep-rooted convictions of the true interpretations of the Constitution and of devotion to republican government in its essence and purity.

"We offer you our heart-felt congratulations, mostly for this, that it has given to you to distinguish a just line between the power and right of the States to choose a President and the unholy claim of one branch of Congress to usurp that power.

"We are aware that in your action you have incurred virulent partisan censure. The road to fictitious greatness, to pretense instead of reality, lay in the other direction, The trial must have been severe, as the temptations you avoided, and the difficulties in your path were great, we the more congratulate ourselves that Newark and New Jersey, in the persons of yourself and Senator Frelinghuysen, have had so large and noble an office in the adjustment of a controversy so solemn as that of the right of a State to vote for the Presidency by its own methods and independent of the dictation and surveillance of Congress. The tendency of the House of Representatives to usurp judicial and executive functions is a danger far greater than any mere change of party rule.

"But it is not our purpose to discuss the great issue you have already adjucated. We only desire to say to you in deep sincerity, that here at your home, where you have gone in and out before the people for many years, the old love and respect are builded up stronger by a new admiration of firmness in judgments that will be historic as they are heroic, and mark an era in the Constitutional law of our beloved country.

"With all wishes for your health and happiness, we remain your attached friends:

"MARCUS L. WARD.
"JOSEPH A. HALSEY.
"SILAS MERCHANT.
"AMZI DODD.
"W. A. WHITEHEAD.
"THOS. T. KINNEY.
"J. WHITEHEAD.
"ABRM. COLES.
"CHARLES S. GRAHAM.
"JOSEPH WARD.
"ISAAC A. ALLING.
"MARTIN R. DENNIS.
"JOHN H. KASE.
"SAMUEL ATWATER.
"WILLIAM A. NEWELL.
"O. F. BALDWIN.
"H. N. CONGAR.
"IRA M. HARRISON.
"A. M. WOODRUFF.
"N. PERRY.
"THEO. MACKNET.
"FRANCIS MACKIN.
"J. D. POINIER.
"WILLIAM WARD.
"THOMAS B. PEDDIE.
"BETHUEL L. DODD.
"W. A. MEYER.
"OBA. WOODRUFF.
"WILLIAM H. KIRK.
"LEWIS C. GROVER.
"S. H. PENNINGTON.
"JOSEPH N. TUTTLE.
"DANIEL DODD.
"WILLIAM B. MOTT.
"JOHN C. BEARDSLEY.
"S. G. GOULD.
"CORTLANDT PARKER.
"P. H. BALLANTINE.
"A. GRANT.
"H. J. POINIER.
"WILLIAM T. MERCER.
"HENRY J. YATES.
"JAMES H. HALSEY.
"CHAS. G. ROCKWOOD.
"A. L. DENNIS.
"LEWIS R. DUNN.
"THEO. P. HOWELL.
"JAMES B. PINNEO.
"J. M. DURAND.
"JOHN R. WEEKS.
"A. Q. KEASBEY.
"JOHN W. TAYLOR.
"GEORGE A. HALSEY.
"JOSEPH COULT.
"JOHN HILL.
"ELIAS O. DOREMUS.
"SANFORD B. HUNT."

# THE "JUDICIAL RECORD"

OF THE LATE

# MR. JUSTICE BRADLEY.

BY WILLIAM DRAPER LEWIS,

OF PHILADELPHIA, PA.

The death of Mr. Justice Bradley removes one who, for the past twenty-one years, has been a member of "the ideal tribunal." No one but his fellow-judges, who have come in daily contact with him, can rightly estimate the extent of the influence which he had on the development of jurisprudence; for we are told that it is in the consultation room that merit, learning and the clearness of one's ideas are best tested. No show of knowledge which one does not possess, no glitter which apes ability, can long deceive those with whom we are engaged in a common intellectual labor. And yet, even if we did not have the testimony of his colleagues, we could not have failed to realize the weight in the councils of a court which that man must have who, like the late Justice, evinced in his written opinions such an intimate acquaintance with all branches of the common and constitutional law of his own country and with the judicial systems of continental Europe, and who showed by the accuracy of his citations in oral statements of the law during the argument of a case, the wonderful retentiveness of his memory.

The members of the profession have two sources from which they can judge a judge; the way in which he conducts the business of the court while on the bench, and his written opinions. The first, in a member of an appellate court, is the lesser of the two in importance, and yet no mention of the late Justice would be complete without some notice of his marvellous aptitude for what one may call "judicial business." It was wonderful to see the quickness and unfailing accuracy with which he applied abstract principles of law to the concrete cases which came before him in the Circuit Court. The highest compliment which a Pennsylvanian could give was paid to him by one of the leading members of the bar of that State, when he said: "In the manner of Judge Sharswood, Justice Bradley cleared the list."

But it is from his reported opinions, and especially his opinions in cases involving the construction of the Constitution, that Mr. Justice Bradley will live in history. In a short time, so quickly do we forget the minor points of a great man's work, by these constitutional opinions alone will he be judged. Whether, as time passes, that judgment will become more or less favorable, depends largely on whether the future members of the Court follow his conceptions of the true meaning of the important clauses of the Constitution. For with our judiciary, as with mankind in general, greatness which comes from "ideas" endures only so long as those ideas influence human thought or conduct.

Nothing will show us more clearly the point of view from which Mr. Justice Bradley regarded constitutional questions than an analysis of some of the

opinions and dissents written by him in the more important cases which came before the Supreme Court during his term of office. To examine first:

THE SLAUGHTER HOUSE CASES.—Few cases have been considered by the Supreme Court with a more abiding sense of their importance; few seem to be fraught with greater peril to the liberties of the individual citizen; few have had such little practical effect. The reason for this will probably be found in the fact that what the Court actually decided was not, as a constitutional question, of great importance. At the same time, the opinion of the Court contained statements of constitutional law of great moment. But to-day the dicta of the minority more nearly represent the attitude of the members of the Supreme Bench than do the dicta of Mr. Justice Miller, who spoke for the majority of his brethren. That the opinion of the Court went beyond what was actually necessary for the decision of the case is evident. The majority of the Court held that the Act of Louisiana, granting to a corporation the monopoly of slaughtering cattle over a territory 1,154 square miles in extent, and containing the city of New Orleans and adjacent territory, was constitutional. The business of slaughtering cattle, the Court maintained, was under the police power of the State, and the act was a police measure, legitimately framed to protect the health of the community. Mr. Justice Bradley, who was among those who delivered a dissenting opinion, admitted that if the measure was, in its operation, well suited to protect the health of the community, there would be no doubt of its constitutionality. He, therefore, agreed with the majority of the Court

on the important question of law which arose in the case—viz.: whether a State could create a monopoly to carry out its health laws; but he differed from the majority on the mixed question of law and fact—whether the law of Louisiana was a law designed to protect the health of the people of New Orleans. He did not think it was, but, on the contrary, considered the law as establishing a monopoly of an important industry, without one iota of public expediency to recommend it.

In the opinion of the Court, however, Mr. Justice Miller, after stating the law to be one designed to protect the health of the citizens of the State, went on to uphold the power of the State to grant monopolies. He says: "The proposition is, therefore, reduced to these terms: Can any exclusive privileges be granted to any of its citizens or a corporation by the legislature of a State?" But, curiously, instead of discussing the power of the legislature to grant the exclusive privilege to carry out its police laws, he goes into the whole subject of monopolies, and upholds the power of the State to grant monopolies and privileges generally. It is this power that Mr. Justice Bradley and the other dissenting Judges vehemently deny, and it is in connection with this denial that the late Justice sets forth with admirable clearness the following conception of the last amendments to the Constitution. These amendments declare that there is a citizenship of the United States, and they protect the rights which appertain to that citizenship from encroachment by the States. The rights of the citizen are the rights of free-born Englishmen. One of the most valuable is the right to carry on any trade and

occupation, hampered only by reasonable restrictions. Furthermore, depriving a man by legislative enactment of his right to carry on a particular trade, is not only interfering with his right as a citizen of the United States, but also deprives him of his liberty and property without due process of law. This latter contention was dismissed without argument by Mr. Justice Miller. In his lengthy exposition of the question of "citizenship," however, that Justice advanced a radically different conception of the amendments. He thought they were, as a matter of fact, designed primarily to prevent discriminations by the State against the colored man, and, in their construction, this fact, which indicated their main object, should always be kept in view. The only privileges and immunities which were protected by the amendments were those which affected citizens of the United States as such. Citizenship of the United States and citizenship of the State were, in his view, two different things. In the amendments those who are citizens of the States are pointed out, but the privileges and immunities of such citizenship are neither defined nor protected. The only rights which are protected from the encroachment of State legislatures are the privileges of the citizen of the United States, and these are those which belonged to the citizens of every national government. As an instance of a national privilege is mentioned the right of a citizen of the United States to go to the seat of the Federal Government. The rights of a citizen of the United States are not the rights of trade and commerce within a State. In fact, we can deduce from Mr. Justice Miller's opinion that all those rights which are exercised solely within

the State, and do not pertain to the national government, are left for their protection to the discretion of State legislatures.

We hope there is little doubt that Mr. Justice Bradley's conclusion, that no State can create a monopoly pure and simple, would be adopted to-day by the Court, on the ground that granting a monopoly would be depriving the individual of his right to carry on a lawful calling, which right is his by virtue of his being a citizen of the United States, and, perhaps, also on the ground that it would deprive him of his property and liberty without due process of law.

Certainly, the words of the XIVth Amendment, as construed by Mr. Justice Miller, do not, as was intended, add any additional securities to our liberties. The United States was a nation before the amendments; and the people of the States were members of that nation, and as such each had the right which belongs to the inhabitants of any free government to go to the seat thereof, travel from one part to another, or assemble to petition for redress of grievances. We cannot but believe that, as the importance of individual liberty becomes more and more impressed upon our minds, the following quotation from Mr. Justice Bradley's dissent will more and more fully echo our own sentiments and the sentiments of the great tribunal which he graced so long.

He says: "The mischief to be remedied (by the amendments) was not merely slavery and its incidents and consequences, but that spirit of insubordination to the national government which had troubled the country for so many years in some of the States, and

that intolerance of free speech and free discussion which often rendered life and property insecure and led to much unequal legislation. The amendment was an attempt to give voice to that strong national yearning for that time and that condition of things in which American citizenship should be a sure guarantee of safety, and in which every citizen of the United States might stand erect in every portion of its soil in the full enjoyment of every right and privilege belonging to free men, without fear of violence or molestation."

This strong statement of the belief that the amendments provided for the complete protection of individual liberty will do more to preserve the name of the great jurist than probably any other single opinion of his in the reports.

THE LEGAL TENDER CASES.—The keynote of the late Justice's opinion of the powers of the Federal Government is found in his expression in the Legal Tender Cases.* "The United States is not only a government, but a national government." As such, he argued, it has all those powers which rightly belong and are necessary to the preservation of the nation. The real question involved in the Legal Tender Cases was with him, as with Mr. Justice Field, who dissented, whether a national republican government, in the exercise of its control over the currency of the country (with complete control over which, Mr. Justice Bradley contended, it is, as a national government invested), can incidentally take the property of one man and give it to another. This is what making bills "legal tender" means. No one can read Mr

* 8 Wall., 555.

Justice Field's dissent on this point without being impressed with its force. The question itself is one of those on which men of trained intellects will always hold different views. The power of the government to protect and preserve itself, and the right of the individual to his property, are two fundamental principles in constitutional law. In the facts of the Legal Tender Cases, they apparently came in direct conflict. The national government, from its nature and the duties and responsibilities which devolve upon it as defender of the people from domestic and external violence, undoubtedly ought to possess greater control over individual liberty and property than the State governments. At the same time it is equally true that there are principles of individual liberty which a national government ought not to be allowed to trample under foot. No one would pretend for an instant that the property of all men over six feet high could be confiscated by the national government on the pretence of saving the country. On the other hand, a tax on all creditors of twenty per cent. on their debts, collected when payment was made, would undoubtedly be constitutional. The facts of the Legal Tender Cases stand between these two extremes. We think that Mr. Justice Bradley was right. It is certain that the majority of the bar and of laymen approve of the decision. The value of his opinion, however, lies not in the particular conclusions to which he came from the facts before the Court, but in the point of view which the opinion adopts toward the power of congress. To say that this view will remain and grow in favor with the bench, the bar and the whole country, is saying nothing more than that we will continue to be one people, under one *national* government.

CHICAGO, ST. PAUL, ETC., R. R. Co. v. MINNESOTA.* —Mr. Justice Bradley differed with the majority of his brethren in his last years of service on the bench on a subject which is likely to be one of great importance during the next decade. As in the Slaughter House Cases, the question arises out of the XIVth Amendment. It is also the result of the laws of some of the States which appoint railroad commissions, vested with power to regulate the rates of fare charged by common carriers on passengers and merchandise transported from place to place in the State. In the above case the majority of the Court, Mr. Justice Blatchford, writing the opinion, held, that, while a grant to the directors in the charter of a railroad, of the right to regulate the rates of fare, does not prevent the States from declaring subsequently, through a general law, that all rates of fare should be reasonable, yet, nevertheless, a State cannot prescribe *unreasonable* rates. And the majority further decided that the judiciary are the final arbitrators of the question, *what are reasonable rates?* If, therefore, the legislature directly fixed unreasonable rates, or the commission appointed by the legislature fixed rates unreasonable in the eyes of the Court, the act was in contravention of the XIVth Amendment, in that it deprived the railroad of its property without due process of law.

Mr. Justice Bradley, in his dissent, took the position, that since the legislature had the power to fix the rates to be charged for public services, such as the transportation of passengers and goods, it should be the final tribunal to determine whether a specific rate is reasonable. And, furthermore, the question of the

*134 U. S., 418.

proper specific rate in any case being essentially an "administrative" question, the State legislatures could constitutionally delegate the power to determine the rate of fare in any specific instance to a commission, or even to the courts. In such a case the courts would act as a commission and determine an administrative or, in other words, an *executive* question. Thus the courts became, as far as the act relating to railway fares was concerned, the executive. Under the acts of the legislature which simply provide general rules for the guidance of the courts in prescribing the rates of fare in any instance, the judges determine the rate as would a railroad commission, or the governor of a State under similar circumstances. But it was for the legislature to say who should determine in a specific instance the rates to be charged by one carrying on a public employment. The proper rate to charge is a legislative and executive but not a judicial question.

In the present confused state of our ideas concerning what is a judicial, what is a legislative, or what is an administrative or executive question, no one can say, with full confidence that his opinion can be sustained by the trend of authority, whether the reasonableness of a rate of fare, charged by a common carrier, ultimately will be considered a judicial question, as the majority of the Supreme Court consider it, or, with Mr. Justice Bradley, regarded as a legislative question. But certainly the last position appeals to us as the more consistent of the two. The word "reasonable," applied in connection with the power of the legislature to prescribe the charges for public employments, either means something or nothing. If it means nothing,

then the legislature has the right, as Mr. Justice Bradley claimed, to prescribe any rate of fare it chooses. This is only another way of saying that the rate established by the legislature, either directly or through a commission, or Court sitting as a commission, is necessarily reasonable, not simply *prima facie* reasonable. The act of Minnesota, which the Court declared unconstitutional, attempted to do this very thing. The majority, therefore, took the position that when they had said in Munn v. Illinois, that the legislatures of the States had power to fix reasonable rates for public employments, the word reasonable meant something. The State legislatures alone being able to prescribe what is reasonable, the reasonableness of any rate becomes a fit subject for judicial investigation.

Now, the inevitable consequences of this position, while they are not palpable absurdities, are, nevertheless, to say the least, extraordinary, in the extent of the power which they place in the hands of the Courts, and the way in which they tie the hands of the State legislatures in respect to subjects over which it has always been considered they had absolute control—*i. e., the subjects under the police power of the State.*

For instance, it may fairly be argued that in any specific instance there is more than one rate which may be said to be reasonable, but no one can deny that there are possibilities of rates being unreasonably high as well as possibilities of rates being unreasonably low. If, then, a legislature has no right to fix anything but a reasonable rate, suppose no rate is fixed by positive act of the legislature, and the company, under permission of the legislature to "fix rates," fixes a rate unreasonably high? The courts, in an action by a

shipper who had paid an unreasonably high rate, would have either to allow him to recover, and in so doing determine what was a reasonable rate for the service of the common carrier, or affirm that the legislature, through the directors of the company, had prescribed an unreasonable rate. Whether under the Constitution of the United States the legislatures of the States can prescribe rates of fare that are unreasonable, may be a question, but it certainly cannot be open to doubt, that no State Court would imply that the State legislature, by its failure to specify or prescribe any rates of fare, had impliedly sanctioned any rates of fare, no matter how unreasonable, which a carrier company may choose to charge. Under the view of the majority, therefore, State Railroad Commissions that are not courts are utterly useless. Not only must their conclusions as to the reasonableness of any rate be reversed by the Judiciary, but the Judiciary possesses a right, without a commission, to declare, at the suit of any individual, that the fare charged by a railroad company is unreasonable, and, therefore, contrary to the will of the State legislature, which, as a matter of courtesy, must be presumed to have provided that the company could only charge reasonable rates.

It may be stated as a general rule that the power to do what another considers reasonable is no power at all. For the last fifty years the courts have been upholding the power of the State to make police regulations. The right of the State to prescribe what a man shall charge when he is carrying on a public employment, as a railroad or a warehouse, was based on this police power. It is now proposed to take away the power by limiting the discretion of the

legislature to what the Courts shall think reasonable. It seems to us that the whole theory on which the right of the State to regulate public charges is based is thus disregarded. It was thought to be based on the fact that when a man takes up an employment, whose proper conduct is of paramount interest to the community, he does so subject to the right of the public to regulate his actions. The will of the people in this as in other respects is expressed through the acts of their representatives in the Legislature. The opinion that the reasonableness of the act of the legislature is a judicial question, substitutes the will of the judges for the will of the people. Mr. Justice Bradley clearly foresaw this, and deeply regretted the inevitable conflict between the Courts and the legislature.

THE COMMERCE CLAUSE.—Outside the interpretation of the amendments, the most important work of the Court during the late Justice's term was the development of the law relating to interstate commerce. No other Justice, except Mr. Justice Miller, has played such an important part in the development of this, perhaps the most complicated branch of constitutional law, and the one on whose proper application rests the future industrial prosperity of the country. Mr. Justice Bradley and his associates found the law relative to interstate commerce involved in doubt. To-day, as a result of their labors, many principles which can be applied to the majority of new cases as they arise have been firmly established. With the most important and far-reaching of these the name of Mr. Justice Bradley, together with that of Mr. Justice Field, will always be indissolubly connected. The question of the nature of the power of Congress over

commerce had often engrossed the attention of the Court. Some judges thought the power was concurrent in the States, others exclusive in Congress. The members of the Court during the time of Chief Justice Taney, seemed to labor between two difficulties. If the States had a concurrent power over commerce, there appeared to be no limit to the extent of the possible interference of State legislatures in the intercourse between citizens of different States. The main purpose of the "more perfect union," was to prevent this interference. On the other hand, if the power was not exclusively in Congress, were not the State pilot laws unconstitutional? Mr. Justice Curtis apparently solved this difficulty in Cooley v. Port Wardens, when he pointed out that the nature of a Federal power depended upon the subjects over which it was exercised; and, therefore, as commerce embraced a multitude of subjects, it was evident that over some, as pilots, the concurrent power of the State extended, while others, as imports in the hands of the importer, were exclusively under the control of the Federal government. During the time of Justices Miller, Field and Bradley, a complete change has taken place in the attitude of the Court, and an important rule, first emphasized by Chief Justice Marshall in Gibbons v. Ogden, has been firmly established. Chief Justice Marshall had said: * * * "All experience shows that the same measure or measures, scarcely distinguishable from each other, may flow from distinct powers, but this does not prove that the powers themselves are identical."* This means that a State, in the exercise of her reserved powers, can pass many laws, such as pilot laws, which it

* 9 Wh., 204.

would be competent for Congress to pass in the exercise of the power over commerce. The fact that the power may be exclusively in Congress, does not prevent the State from making a law whose purpose, as disclosed by its terms, is fairly intended to improve the internal commerce of the State, or to protect the health and morals of the people, from being a constitutional law, though Congress might have passed a similar law in the exercise of one of her exclusive powers. As far as interstate commerce is concerned, the adoption of this principle ends the confusion which arose from discussing a concurrent power of the State over a subject which, as interstate and foreign commerce, is essentially national. One cannot but believe that its recognition is a distinct advance in our constitutional law. For from the standpoint of political science, one of the purposes of that law is to separate things national from things local. In the complete development of constitutional law, therefore, there can be no such thing as a subject which is at once partly national and partly local. Naturalization, for instance, ought to be a national matter or a local or State matter. To declare that it is both would be to invite confusion. The realization that interstate commerce, as such, is solely a national matter, but that nevertheless there is nothing to prevent the States, in the exercise of their reserved powers, from passing laws which Congress might pass in the exercise of its exclusive power over such a commerce, which is mainly due to Mr. Justice Field and the late Justices Miller and Bradley, has therefore, done much to clarify our ideas on constitutional subjects.

An important adjunct to the above-mentioned

theory, in regard to the consequences of an exclusive power in the Federal government, is the doctrine which was developed simultaneously with it, and known as that of the " silence of Congress." When the Court regarded the exclusive power of Congress over commerce as not preventing the States, in the absence of conflicting congressional legislation, from affecting commerce in the exercise of their police powers, it immediately followed that any law of the State, no matter how much it obstructed interstate commerce, such as a bridge over an important river, was entirely within the power of a State to enact, provided its main object was one which it was competent for a State to undertake. Such a result was to be profoundly deplored. Justices Field and Bradley, in a long line of cases, commencing with Welton v. State of Missouri,* took the old distinction between things over which Congress was supposed to have an exclusive control, and those over which the States were supposed to have a concurrent power, and formulated and applied the now famous constitutional doctrine, that the silence of Congress respecting regulations of subjects in their nature national must be taken by the courts as an indication of its will that commerce in this respect should be free from State regulations; but over certain other subjects, such as pilots, over which it used to be contended that the concurrent power of the States extended, then the non-action or silence of Congress is no indication of its will that commerce in this respect should be free from State regulations, and, therefore, State laws which affect these subjects do not conflict with the will of Congress. Thus, though the way of regarding the

* 91 U. S., 275

power of the States in respect to commerce was modified, hardly a case had to be overruled.

The practical effect of this interpretation of the commerce clause of the Constitution is a masterpiece of judicial legislation. It requires that the consent of the Federal authority should first be obtained before a particular locality essays to embark on legislation, which, however necessary to preserve the morals of the citizens, profoundly affects the commerce of the whole country. But when once the whole nation decides that such local legislation may, in some instances, be desirable, the particular regulations are enacted by the States, which alone are familiar with local conditions.

This examination of the opinions of the late Justice might be continued indefinitely. We cannot dignify a sketch which has simply touched the outskirts of his work with the name *review*. When we look over the long line of decisions with which his name is connected, a feeling akin to awe and reverence comes over us. Of awe, at the magnitude of the work; of reverence, at the greatness of the intellect which solved such a variety of problems. Surely the late Justice was one of those men of whom we, as Americans, can be justly proud. He combined in his own person and character the two strong points of the Anglo-Saxon: a great and wide practical knowledge of men and things, combined with the power of concentration and subjective analysis. At his death, the bench, bar and country lost one who, for the clearness of his thought and for the thoroughness of his acquaintance with all subjects connected with his profession, was perhaps without a superior in the history of our judiciary.

# * "DISSENTING OPINIONS"

OF

# MR. JUSTICE BRADLEY.

BY THE LATE A. Q. KEASBEY, Esq,
OF NEWARK, N. J.

An interesting paper was read at the recent meeting of the American Bar Association, by Mr. Hampton L. Carson, of Philadelphia, entitled, "Great Dissenting Opinions." It may be found in the Albany Law Journal for August 25, 1894. It was a happy thought to recall in chronological order the important dissenting opinions of the justices of the Supreme Court of the United States upon questions of constitutional law. The writer justly says that these opinions, viewed in mass for the last hundred years, constitute in a certain sense the best exposition of the views of two contending schools of constitutional interpretation, and enable us to grasp the living principles underlying the struggle between the expanding empire of national federalism, and the shrinking reservation of State sovereignty. He takes up in their order the great cases, the names of which have become fixed in the memory of all students of our constitutional history, as the names of famous battle-fields become landmarks in the progress of the world. He brings before us in vivid array, Chisholm's Executors v. Georgia; Marbury v. Madison; Sturges

* New Jersey Law Journal, October, 1894.

v. Crowninshield; McCulloch v. Maryland; Cohens v. Virginia; Gibbons v. Ogden; Dartmouth College v. Woodward; Osborne v. U. S. Bank; Brown v. Maryland; Craig v. Missouri; Ogden v. Saunders; Charles River Bridge v. Warren Bridge; Genesee Chief v. Fitz Hugh; the License cases; the Passenger cases; Prigg v. Pennsylvania; the Dred Scott case; the Legal Tender cases; the Slaughter House cases and others.

These names in themselves recall to the mind of every student of our constitutional history the phases of the varied contests which have marked the development of our national jurisprudence, and it is as Mr. Carson says, "of infinite value to gaze on the most hotly-contested battle-fields, while it is ennobling to know how heroes fought in defense of causes which they held dear." Indeed some of these contests carried on in the quiet chamber of justice, in Washington, with no flare of trumpets or waving of banners, will be in the long future of more interest and importance than any waged on our actual battle-fields. We commend this scholarly paper to the general student of our history, as well as to the bar, as one of fascinating interest.

But the special object of this note upon it, is to allude to the part taken by our great New Jersey Justice of the Supreme Court, in the contests that occurred during the twenty years of his judicial service. In the leading constitutional cases, he wrote few dissenting opinions. Like Marshall, he was strong and masterful enough generally to carry the Court with him. Mr. Carson, in his paper, speaks of only one dissenting opinion of Marshall, in Ogden v. Saunders, and says that this was the only great dissenting opinion which

occurred during his judicial career. And in the course of the paper only one dissenting opinion of Mr. Justice Bradley is alluded to, that which he read in the slaughter house cases, in which, with Mr. Justice Field, he urged, in energetic terms, that the fourteenth and fifteenth amendments were intended for whites as well as blacks; that they conferred on all citizens of the United States the fundamental rights of person and property usually regarded as secured in all free countries. But this was not the only dissenting opinion of Judge Bradley in matters of grave constitutional import. Indeed the very last opinion read by him, but five weeks before his death, was a dissenting one, and related to a branch of constitutional law, to which he had devoted his best powers throughout his judicial career—that of the scope of National authority in the matter of interstate commerce. To extend and secure this authority by judicial interpretation of the commerce clause of the Constitution had been his earnest effort in every case in which the question arose in any form. In a long line of decisions he had expressed his views with the logical power and persuasive earnestness which enabled Marshall to accomplish his great work. Only three years before his death, in his opinion in the Arthur Kill Bridge case, in the New Jersey Circuit, he had stated his views as to the scope of the commerce clause in their most advanced form. One hundred years before, the State of New York had granted to John Fitch, the exclusive right to navigate her waters with vessels "moved by fire or steam," and continued it to Robert Fulton and Robert R. Livingston in 1803. Their assignee obtained an injunction from the Chancellor of New York to stop a Jerseyman

from running steamboats from Elizabethtown to New York City. But in 1824 the Supreme Court of the United States held the State law invalid, and Chief Justice Marshall laid down principles which have been reasserted in various forms and applied with increasing force to all instrumentalities of interstate intercourse in every phase of its development. In the Arthur Kill Bridge case these principles had been rudely assailed by the State of New Jersey in its turn, as New York had done a century before. Her legislature declared by joint resolution, that the waters of the Kill and the soil under them were hers by sovereign right, and that if the Congress should authorize a bridge, it would be a usurpation, and the sympathy of all sister States was invoked in the struggle of New Jersey for State rights. A law was passed also expressly forbidding any person or corporation to bridge any river dividing New Jersey from other States.

A law of Congress authorizing the Baltimore and New York Railroad Company to bridge the sound was passed, notwithstanding this State protest, and the company proceeded to do so. The Attorney General of New Jersey obtained an injunction and the work was stopped—as the New York Chancellor stopped Mr. Gibbons from running his steamboats, the Stoudinger and Bellona, from Elizabethtown to New York, in 1824. The case was removed to the United States Circuit Court, and this furnished Mr. Justice Bradley an opportunity to express his views on the subject of interstate commerce, and he did it with a vigor not surpassed by that of Marshall in Gibbons v. Ogden. He declared that "the power of Congress is supreme over the whole subject, unimpeded by State laws or

State lines; that in matters of foreign and interstate commerce *there are no States;* and that it must be received as a postulate of the Constitution, that the government of the United States is invested with full and complete power to execute and carry out its purposes, whether the States co-operate and concur therein or not." As to the claim of the State to ownership of the waters and the soil under them he said, "The power to regulate commerce is the basis of the power to regulate navigation and navigable waters and streams; and these are so completely subject to the control of Congress, as subsidiary to commerce, that it has become usual to call the entire navigable waters of the country the navigable waters of the United States. It matters little whether the United States has or has not the theoretical ownership and dominion in the waters, or the land under them; it has what is more, the regulation and control of them for the purposes of commerce, so wide and extensive is the operation of this power, that no State can place any obstruction in or upon any navigable waters against the will of Congress, and Congress may summarily remove such obstructions at its pleasure."

This case was taken to the Supreme Court, but the appeal was abandoned by the State, and the bridge was built, and now the Hudson River is to be bridged at the city of New York under a law of Congress, without opposition. Judge Bradley expressed his regret at the withdrawal of this appeal, for he was anxious for every opportunity to vindicate his views on interstate commerce and embody them in the judgments of the Supreme tribunal.

Certain cases afterward occurred, in which he felt that the Court was taking retrograde steps on this subject, which he deemed of vital importance.

One of them was Pullman's Palace Car Company v. Commonwealth of Pennsylvania, 141 U. S. 101, decided May 11, 1891.

In this case the majority of the Court *held*, that "there is nothing in the Constitution or laws of the United States which prevents a State from taxing personal property within its jurisdiction, employed in interstate or foreign commerce," and that, "where the cars of a company within a State are employed in interstate commerce, their being so employed does not exempt them from being taxed by the State." The opinion of the Court was read by Mr. Justice Gray, and Justices Bradley, Field and Harlan dissented. Mr. Justice Bradley read the dissenting opinion, in which he asserted his well known views on the score of the commerce clause very strongly, saying that "A citizen of the United States, or any other person, in the performance of any duty, or in the exercise of any privilege, under the Constitution or laws of the United States, is absolutely free from State control in relation to such matters. So that the general proposition, that all persons and personal property within a State are subject to the laws of the State, unless materially modified, cannot be true." After a careful review of the cases he dissented emphatically from the result reached by the Court, and closed by saying: "The State can no more tax the capital stock of a foreign corporation than it can tax the capital of a foreign person. Pennsylvania cannot tax a citizen and resident of New York, either for the whole or any portion

of his general property or capital. It can only tax such property of that citizen as may be located and have a *situs* in Pennsylvania. And it is exactly the same with a foreign corporation. Its capital, as such, is not taxable. To hold otherwise, would lead to the most oppressive and unjust proceedings. It would lead to a course of spoliation and reprisals that would endanger the harmony of the union." The same dissent was filed in the case of Pullman's Car Co. v. Hayward, decided on the same day, in which it was *held*, that, "the cars of a company, let to railroad corporations, and employed exclusively in interstate commerce, may be taxed in a State, and the tax apportioned among the counties of the State according to mileage of the railroads in each county, and levied in those counties." Judge Bradley regarded these cases as indicating a divergence from the line of decision which he had long striven to maintain.

Another case was the one already alluded to in which he read his last opinion, dissenting from the views of the majority. It was the case of State of Maine v. Grand Trunk Railroad Company of Canada, 142 U. S., decided December 14, 1891.

Justice Field read the opinion of the Court, holding that a State can levy an excise tax on a railroad corporation for the privilege of exercising its franchise within the State; that the character of such a tax or its validity are not determined by the modes adopted in fixing its amount for any specific period of its payment; and that reference to the transportation receipts of a railroad company, and to a certain percentage of the same in determining the amount of an excise tax on the company is not in effect the imposition of a tax

on such receipts, nor an interference with interstate commerce, although the railroad lies partly within and partly without the State. Justice Bradley regarded this as an undue limitation of the power of Congress over interstate commerce, and read an adverse opinion. It may not take rank amongst "Great Dissenting Opinions," but it displays his mental characteristics in a striking manner, and shows the vigor and earnestness which he always brought to bear in dealing with this great subject. Three of his associates concurred with him. He said: "Justices Harlan, Lamar, Brown and myself, dissent from the judgment of the Court in this case. We do so both on principle and authority. On principle because, whilst the purpose of the law professes to be to lay a tax upon the foreign company for the privilege of exercising its franchise in the State of Maine, the mode of doing this is unconstitutional. The mode adopted is the laying of a tax on the gross receipts of the company, and these receipts, of course, include receipts for interstate and international transportation between other States and Maine, and between Canada and the United States. Now, if after the previous legislation, which has been adopted with regard to admitting the company to carry on business within the State, the Legislature has still the right to tax it for the exercise of its franchises, it should do so in a constitutional manner, and not (as it has done) by a tax on the receipts derived from interstate and international transportation. The power to regulate commerce among the several States (except as to matters merely local) is just as exclusive a power in Congress as is the power to regulate commerce with foreign nations and with the Indian tribes. It is given

in the same clause, and couched in the same phraseology; but if it may be exercised by the States, it might as well be expunged from the Constitution. We think it a power not only granted to be exercised, but that it is of first importance, being one of the principal moving causes of the adoption of the Constitution."

He then referred to disputes between States as to interstate facilities of intercourse, and the intolerable discriminations made, and said: "Passing this by, the decisions of this Court for a number of years past have settled the principle that taxation (which is a mode of regulation) of interstate commerce, or of the revenue derived therefrom (which is the same thing), is contrary to the Constitution."

He cited, Pickard v. Pullman Car Co., 117 U. S. 34,—annual tax on sleeping cars going through the State; Leloup v. Mobile, 127 U. S. 640,—telegraph receipts; Norfolk Co. v. Pennsylvania, 136 U. S., 114,—keeping a through railroad office in a State; Crutcher v. Kentucky, 141 U. S. 47,—taxation of express companies for doing business between the States.

And added: "A great many other cases might be referred to, showing that in the decisions and opinions of this Court this kind of taxation is unconstitutional and void. We think the present decision is a departure from the line of these decisions. The tax, it is true, is called a tax on a franchise. It is so called, but what is it in fact? It is a tax on the receipts of the company, derived from international transportation."

After speaking of the length to which State Courts and the Supreme Court have gone in sustaining various forms of taxes on corporations, he said: "I do not know that jealousy of corporate institutions could be

carried much further. The Supreme Court has held that taxation of Western Union stock in Massachusetts, graduated by the mileage of lines in that State compared with the lines in all other States, was only a tax upon its property, yet it was in terms a tax upon its capital stock, and might as well have been a tax upon its gross receipts. The present decision holds that taxation may be imposed upon the gross receipts of the company for the exercise of the franchise within the State, if graduated according to the number of miles the road runs in the State." And he closed by saying: "Then it comes to this. A State may tax a railroad company upon its gross receipts, in proportion to the number of miles run within the State, as a tax on its property and may also lay a tax upon these same gross receipts in proportion to the same number of miles for the privilege of exercising its franchise in the State. I do not know what else it may not tax the gross receipts for. If the interstate commerce of the country is not, or will not be, handicapped by this course of decision, I do not understand the ordinary principles which govern human conduct."

Mr. Justice Bradley died on the 22d day of January, 1892, only a few weeks after reading this opinion. The great Chief Justice lived eight years after delivering his dissenting opinion in Ogden v. Saunders. Mr. Carson says that this opinion by Marshall has been termed his master effort; that "prior to that time the steadiness of the movement of the ship of state under the hand of her great helmsman, had been without wavering or shadow of turning;" and that "with the passing of Marshall, the school of strict constructionists marched to power, and the current of decision

was turned into channels, running in a new direction."

It does not seem likely, in the present situation of the country in respect to interstate commerce, that the current of decision on the subject will run in any new direction, or meet with serious obstacles with the passing of Bradley. And yet, within two weeks of his death, he expressed to the writer of this note his fear that such might be the case, and alluding to the judgment from which he had so lately dissented, he said with great earnestness, and evidently with some foreboding, that he hoped to live and retain his faculties for four years more, so that he might finish the work of placing the power of the national government over interstate commerce, in all its forms, on an impregnable basis.

SEPTEMBER 24, 1894.

# THE LEGAL TENDER CASES IN 1870.

The recent death of Justice Stephen J. Field of the Supreme Court of the United States releases me from a sacred obligation, imposed by my father, the late Justice Joseph P. Bradley, when on his deathbed and enables me to publish to the world the true and heretofore unknown history of the controversy in the secret conferences of the Supreme Court, which led up to and resulted in the famous Legal Tender decision of that Court,—the reversal of the decision of the U. S. Supreme Court in Hepburn v. Griswold, and to vindicate the memory and reputation of my father, by refuting the slanderous charge that Judge Strong and Judge Bradley were appointed to the bench with the distinct understanding that they would vote to reverse the first decision of the Court on that question—the constitutionality of the Legal Tender Act.

The obligation above referred to was that I should not permit the documents herewith printed to become public, "as long as any Justice who was on the bench at that time was still living," and being given me by my father at such a solemn moment and reinforced by the personally expressed wish of Justice Strong, I have religiously conformed to it, but not without great effort, in the face of repeated statements published by distinguished writers, in which they have accepted a mere political rumor of the day, as a *fact* and have referred to the incident as the "packing" of the Court.

Paul L. Ford, in the "Introduction" to his edition of the "Federalist" so refers to it, and J. W. Shuckers in his elaborate "Life and Public Services of Salmon Portland Chase" (Chief Justice Chase), devotes a whole chapter to the subject, pointedly and suggestively intimating that it was a prearranged scheme, if not a corrupt bargain between the then Executive, Gen. Grant, and the two appointees, Strong and Bradley.

Ex-Secretary of the Treasury, Charles S. Fairchild, in a public address at Boston a few years ago, repeated the charge, and this at last, induced Senator George F. Hoar, of Massachusetts, to publish a refutation of it, based on historical facts and dates, but more particularly in defense of his distinguished brother, Hon. E. R. Hoar, at the time Attorney General, and who had warmly supported and urged the appointment of Judges Strong and Bradley. But the real history of the *action* of the Court itself is contained and only contained in the "Statement," now given to the public.

The original paper, prepared by Mr. Justice Miller, at the request of the majority of the Court, and signed by them (now in my possession), was kept by him until his death, when Mr. Justice Bradley obtained it and preserved it till the day before he died, at which time he consigned it to my keeping with the injunction before mentioned. This was done with the knowledge and consent of Mr. Justice Strong, the surviving signer of the paper.

It is now given to the public, not only as a vindication of these two great and honorable judges, but in the hope that it will definitely and for all time

settle this often misrepresented controversy and silence the tongues and pens of those who have lightly tossed about the reputations of two men, whose names in legal history will long remain as bright stars in American jurisprudence.

The facts of the case leading up to the controversy cannot be better stated than by quoting from Senator Hoar's letter to the *Worcester Spy* of December 7, 1896:

"On the 7th day of February, 1870, the Supreme Court of the United States met at 12 o'clock. The Senate met at the same hour. After the disposition of some other business, Chief Justice Chase announced the decision of the Court in Hepburn v. Griswold. The Court held, in substance, that it was not within the constitutional power of Congress to make the United States Treasury notes legal tender for debts, past or future. The Chief Justice in his opinion said, in substance, that this power was not expressly granted to Congress by the Constitution, and was not implied as being necessary to the execution of other expressly granted powers, including the power to declare and carry on war. The Judge who gave this decision was himself the author of the law which he declared unconstitutional, and had recommended its passage, and had procured the votes of reluctant Senators and Representatives by personal interviews in which he had urged the passage of the measure on the ground that it was impossible to carry on the war without it, and that the government could neither pay its soldiers nor fulfil its contracts for the supplies and materials of war, if it were restricted to gold and silver alone. Among the persons with whom Mr. Secretary

Chase had these personal interviews is my late colleague, Mr. Dawes, then a leader in the House of Representatives, and several other living persons whom I might name, as well as a good many who are deceased. I mention this not for the sake of implying any censure upon that great statesman and patriot, Chief Justice Chase, for declaring in his place upon the bench the law as it then seemed to him, after the exigencies of the war had passed. Indeed, he deserves the greater honor, if, in interpreting the Constitution in his place upon the bench, he disregarded the consideration that his own reputation might be affected by the charge of inconsistency or by the condemnation which his decision would imply of his own previous conduct. I only mention the fact to show that it was very unlikely that anybody should have expected beforehand that he alone among the leading Republican statesmen of the war period, should come to such a conclusion.

This decision was announced, as I have stated, on Monday, February 7, 1870. I suppose that opinions were read in other cases, that motions were heard, as was then usual on Monday morning, and that probably this opinion was not read before two or three o'clock. Indeed, the reading of the Chief Justice's opinion, and those of the minority, must have taken an hour or two. On the same day, February 7, 1870, the nominations of Justices Strong and Bradley were sent to the Senate. The fact that they were sent there was announced in the *Washington Evening Star* of February 7, and in the Boston and New York evening papers that day. I have now in my hand copies of the nominations which I have obtained from the files of the Senate. They read as follows:

"*To the Senate of the United States:*

"I nominate Joseph P. Bradley, of New Jersey, to be Associate Justice of the Supreme Court of the United States.

"U. S. GRANT.

"Executive Mansion, February 7, 1870."

This is a precise copy of the nomination of the Hon. William Strong, except the name and State. The Senate journal does not show the receipt of any particular nomination until the Senate goes into executive session, which may not be for some days. But the nominations are made public at once, and these were made public all over the country on the afternoon of February 7. I have also in my hand a copy of what was printed in the *Washington Evening Star* of Feb- 7. At the head of the first column, first page, under the heading, "Nominations," is the announcement that the President sent to the Senate that afternoon the nomination of Joseph P. Bradley to be Associate Justice of the Supreme Court of the United States, vice E. R. Hoar, rejected; and William Strong to be Associate Justice of the Supreme Court of the United States, vice Edwin M. Stanton, deceased.

In the *New York Tribune*, of Tuesday, February 8, is the Washington letter of February 7: "The President sent to the Senate to-day the names of Bradley and Strong." In the *Boston Evening Transcript of* February 7, is the statement: "The President has just nominated to the Senate, Judge Strong of Pennsylvania and Joseph P. Bradley of New Jersey as Associate Justices of the Supreme Court." But, more than all, the *Boston Herald* published on the morning of February 8, has, likewise, an announcement of these nominations made the day before. The evening edition

of the *Herald* for February 7, is not in our library. I presume you will find the same thing there, though that is unimportant.

The Senate journal, as I have said, does not show the receipt of any particular Executive nomination until it is opened and laid before the body in Executive session, which may not take place for days or weeks, although ordinarily there is one every few days. But the *Congressional Globe* of that morning shows that the Senate merely transacted its routine morning business, and then took up resolutions in honor of a deceased member, and adjourned. It further shows that during the routine morning business, and before the introduction of bills and resolutions, the President's secretary came in with sundry legislative messages. It is the only time he came in that day. So, undoubtedly, the Executive message nominating the Judges was delivered at the same time with the legislative messages, and was upon the table of the Senate a few minutes after 12 o'clock.

I have dwelt upon these details to show the absolute accuracy of my statement and that of my brother, which I shall quote hereafter, that these nominations were made before the decision. But the question whether the Chief Justice announced his opinion or the nominations got to the Senate first by a few minutes is of the most trifling character, because the President's signature to the nominations must have been made before the session of the Senate that morning, and the Cabinet meeting at which they were discussed was held Tuesday of the previous week, and, as will appear very soon, the nomination of Judge Strong, at least, had been discussed and agreed upon long before.

The decision of the Supreme Court in Hepburn v. Griswold was made and entered when the Judges had finished reading their opinions on Monday, February 7th, 1870, after the nominations of Justice Strong and Bradley had been laid upon the table of the Senate. It was some hours after they had been signed by the President. It was some days after they had been agreed on in Cabinet meeting. It was weeks after the probable appointment of Judge Strong, as I shall show presently, had been announced in the newspapers. That was the first and only decision of the Supreme Court in Hepburn v. Griswold. I shall speak presently of what took place November 27, 1869. What I am speaking of now is the decision of the Supreme Court.

The practice of the Supreme Court of the United States is, I suppose, well understood in Massachusetts. It has lately been described by Mr. Justice Harlan in a public address in Cincinnati.

I have taken pains also to get from a very high authority, indeed, a statement to the same effect. The course is precisely the same as that pursued by the Supreme Court of Massachusetts, except that while the decisions of the Supreme Court of the United States are announced, according to the old practice, orally from the bench, the decisions of our Court are now made by a rescript filed in the clerk's office, and accompanied by a brief written statement of the Court's reasons. The course of proceeding in the Supreme Court of the United States is this: After the hearing of arguments the Judges meet in consultation. Each of the Judges states his opinion as fully as he may desire. After every Judge has been heard, and the matter has been discussed as far as any member of the Court thinks fit,

the Judges vote upon the case. The Chief Justice then directs what Judge shall deliver the opinion of the Court. If any Judge dissent, he is at liberty to prepare a minority opinion giving his reasons and the reasons of the other Judges who may agree with him. No record is made of this proceeding, and it is kept absolutely secret within the breasts of the Judges until the public announcement of the opinion in the way I have stated. At some future meeting of the Judges, when the opinion of the Court has been prepared, it is read over to the Judges. It is discussed, changed or modified in consequence of any suggestion that may be made. In very recent years it has been the custom of the Judge preparing the opinion to send copies to his brethren. It sometimes happens that an investigation by the Judge who has the responsibility of preparing the opinion changes his mind and suggests to him some new point of view, which he reports to his fellows, and which changes their minds also. I have had this happen twice in my own practice in Massachusetts. One case was Taft v. Uxbridge, where the Court first came to a conclusion in my favor, which was afterward reversed; and one was the case of Wolcott v. Winchester, where the Court first came to a conclusion against me, but afterward decided in my favor. But no record whatever is made of anything except the mere memoranda of the Judges to aid their own memory until the public announcement. Now to call this proceeding a decision of the Court is, in my opinion, a misuse of language. It is in the highest degree secret and confidential. Any Judge who should betray the confidence of the Court in this matter would be absolutely disgraced, would forfeit the respect of his fel-

lows; and when we consider the effect upon properties and business affairs of many of these decisions of the Supreme Court of the United States, I suppose it is not too much to say that he would deserve impeachment. I inquired of two Justices of the Supreme Court of Massachusetts, both of whom had been reporters, whether they had ever known of this secret getting out from the Supreme Court of Massachusetts since the beginning of the Government; and they both replied that they had never known or heard of such a case. In the case of the Supreme Court of the United States I have never known or heard of such a case, with one or two exceptions, although I have been tolerably familiar with that Court and pretty intimately acquainted with every member of it for nearly twenty-eight years. There was a case some time ago where a decision which considerably affected the price of stocks in some way leaked out. Whether it came from some imprudent remark of one of the Judges, or from some page or attendant about the Court room who came across some paper which had been carelessly left exposed, nobody knows. But it excited great feeling on the part of the members of the Bench. Before the Dred Scott decision President Buchanan expressed in his message the hope that the question of the power of Congress over slavery might be removed from political discussion by the determination of the Supreme Court. It was conjectured, but never proved, and I think never believed by the large majority of the profession of the country, that he might have had some understanding in the matter with Chief Justice Taney. I do not believe it myself. The knowledge that the question was before the Court and the general opinions

upon public questions of its members were quite sufficient for President Buchanan's hope, without attributing anything wrong to any member of the Bench.

I ought frankly to concede that to this ascertainment in conference of the opinions of the members of the Court, the term "decision" is not infrequently applied, although there is nothing final in its character. But the word to be used is of no consequence if only the substance of the transaction be clearly understood. There is no finality about it. It is merely what the Judges call a "semble." The Judges hold their minds open to reconsider, modify, or reverse their opinions if new light be shed upon the case by the researches of the Judge who prepares the opinion, or by further reflection or further discussion when the opinion is read in full. And they keep these opinions an absolute secret.

A second meeting of the Judges was held in regard to Hepburn v. Griswold on the 29th day of January, 1870. The opinion in that case was not read and agreed to in conference until that day. (See the opinion of Chief Justice Chase in the Legal Tender Cases, 12 Wallace, 572.)

The dates with which we have to deal with are these:

The opinion of the Judges ascertained in conference 27th November, 1869.

The opinion read and agreed to in conference January 29, 1870.

The opinion of the Court announced, and the decision entered upon the docket, February 7, 1870.

The statute increasing the number of Judges passed April, 1869, to take effect December, 1869.

The nominations of Judges Strong and Bradley sent to the Senate February 7, 1870.

Stanton nominated, December 20, 1869.

Stanton died December 24, 1869.

Judge Grier's resignation to take effect February 1, 1870.

Judge Hoar nominated December 15, 1869.

Judge Hoar rejected February 3, 1870.

It appears from the above statement that when the decision was entered and the opinion was publicly announced, there were but four Judges upon the Bench who agreed to that decision, out of a Court, which when full, consisted of nine. This consideration has not the slightest effect upon the validity of the decision. Whether it should have any weight as to the propriety of a rehearing, is a fair question.

I have no doubt the Court discussed, in consultation, the case of Hepburn v. Griswold, November 27, 1869, and the opinion of the majority was then ascertained. We will consider presently the question whether that opinion leaked out. But first let us take the history of these appointments. When President Johnson came into power the Supreme Court consisted of ten members. By the statute of July 23, 1866, it was enacted that there should be no new appointments, until by death or resignations the Court should be reduced to seven members, and seven thereafter should be the number of Justices. This statute has been generally supposed to have been passed to take from President Johnson the power of appointing any new Judges in place of some of the members of the Court who were growing old, and whose places, in the course of nature, would shortly be vacant. When President Grant came in,

the number of the Court had become reduced to eight members. The docket had become crowded with business, and suitors had to wait years for a hearing. Accordingly, at the short spring session in 1869, an act was passed increasing the number of Justices to nine, and authorizing the President to nominate an additional Judge to the session of the Senate, which would take place the following December. The President nominated to that vacancy Mr. Hoar, then Attorney General. This nomination was made December 14, 1869. I have never heard that anybody supposed or intimated that that nomination was made for the purpose of packing the Court, although, as you will observe, it was made three weeks after the first conference of the Supreme Court in regard to Hepburn v. Griswold, and the conclusion then arrived at, by whatever name you choose to call it. There were two members of the Cabinet from Massachusetts. There was none from the great State of Pennsylvania, and there was none from the South. I suppose I should not have to go beyond the columns of the *Boston Herald*, or beyond the abundant testimonials of eminent lawyers, to support the statement that Judge Hoar's character and legal ability were such as to render no other explanation of his selection necessary.

President Grant had determined upon this appointment months before. September 23, 1869, the President called upon Judge Hoar at his room, stayed two hours, and informed him that there was no lawyer from the Southern States he felt willing to appoint to the Court, and asked him to accept the office. I have now before me my brother's letter to me of that date, in which he states these facts, and asks my advice as to his acceptance.

Mr. Justice Grier, early in December, 1869, sent in his resignation, to take effect on the first of the following February. I have not the date when Judge Grier sent in his resignation. But the nomination of Mr. Stanton, his successor, of which I have the record with me, was made by the President December 20, 1869. I have never heard that anybody ever dreamed that the selection of Stanton was made for the purpose of packing the Court. A petition asking his appointment had been sent to the President, signed, if I am not mistaken, by every Republican member of the Senate. He had been a great lawyer. He had been Attorney General of the United States. He was the great War Secretary. With the exception of Grant and Seward and Sumner and Chase, he was undoubtedly the most conspicuous figure in American public life. He was a Pennsylvanian, and belonged to the Circuit to which the President would naturally look for a successor to Mr. Justice Grier. Stanton died after accepting the office and before taking his seat, on the 24th day of December, 1869. Mr. Hoar was rejected by the Senate on the third day of February, 1870, four days before the decision of Hepburn v. Griswold.

When Judge Hoar was nominated, it became necessary for the President to look out for another Attorney General. William Strong of Pennsylvania was offered the place. He came to Washington to see about it. I, myself, saw him there and was introduced to him. I knew at the time that it was expected that he would be my brother's successor, although I cannot say from memory that I heard him say that he expected to take the place. So when Stanton died,

and Judge Hoar was rejected and remained in the old office, it seemed almost inevitable that Judge Strong, if he were fit for the place, should be offered one of the vacant Judgeships. He was from Grier's circuit, and from Pennsylvania, the State in that circuit to whose able Bar the President had looked for an Attorney General. He was admirably qualified for the place. He had been a great Judge in his own State. He was not only the head of the Bar in that circuit, certainly the leading Republican lawyer, and he held a place in the reverence and affection of the people who knew him, as a man of singular purity and integrity, which I had almost said was equalled by that of John Jay alone. I think I am not over bold when I affirm that the bitterest partisan in this country, of whatever political opinion, or from whatever part of the country he may come, will not question in the light of his long service upon the Bench, that the nomination of William Strong needs no explanation other than the statement of the conspicuous merit and quality of the man. This nomination would have been practically inevitable, if the legal tender decision, or the legal tender law, had never been heard of.

Stanton died December 24, 1869. But it was quite natural that the President should not nominate his successor until the question of Judge Hoar's confirmation or rejection was settled. If Judge Hoar had been confirmed, the original plan of having Mr. Strong Attorney General might have been carried out, although he would probably have been appointed to Judge Grier's place. I have no special means of forming an opinion on that question. But the President awaited the final action of the Senate, which undoubtedly had been expected for some time before the final vote, and then sent in the two names together.

I do not think it necessary to vindicate the selection of Mr. Justice Bradley, any more than that of Judge Strong. I have heard eminent lawyers compare him with Chief Justice Marshall, in the vigor and grasp of his intellect, and attribute to him a variety of accomplishments which would not be attributed to Marshall. But such utterances, when we experience a great public loss like that of Judge Bradley, are apt to be extravagant. It is only necessary to say, what I am sure every living lawyer who is interested in such things will agree to, that there is no greater or purer judicial fame than that of Judge Bradley among the Judges who were upon the Court when he took his place upon it, or who have been upon the Court from that day to this.

One thing ought, however, to be said. It was by Judge Bradley's advice that the great railroad, for which he was counsel, determined, when the legal tender laws were in force, that honor and duty required them to pay their debts in gold.

Now, having stated the facts, let us come directly to this foul charge. It can only be sustained by proving three things:

(1.) That the confidence of the Court had been betrayed, and the views of the Judges upon the constitutionality of the legal tender law which they had expressed to each other in their conference, November 27, had leaked out;

(2.) That these views had become known to President Grant and to the Attorney General or the Cabinet;

(3.) That in consequence of such knowledge they had done something they would not have done but for that.

These three points have been so conclusively disposed of in Senator Hoar's "Refutation" that further comment on that question is unnecessary. The Court finally having its full complement of Judges, and the imperative necessity of obtaining a final decision of the questions involved in the case of Hepburn v. Griswold forcing itself upon the Government, application for a rehearing of them was made by the Attorney General, and it is to this application and the result of it that the "Statement" prepared by the majority of the Court, and herewith published, has to do. Let it speak for itself!—[EDITOR.]

## A statement of facts relating to the order of the Supreme Court of the United States for a re-argument of the Legal-Tender Question, in April, 1870.

[As much adverse criticism has been made upon the action of the Supreme Court in re-considering the Legal-Tender question in other cases, after the decision made in the case of *Hepburn* v. *Griswold*, (8 Wall. 603), the following statement of the facts connected therewith, made by the Justices who voted for the re-consideration, is due to the truth of history. It was elicited by a statement made by Chief Justice CHASE, and placed by him on the files of the court, but withdrawn when he learned that a counter statement would be made. Inasmuch, however, as his statement has evidently been used by his biographer, if not in other ways, it is no more than just that the statement of the Justices should be printed for preservation and for future reference if necessary.

It is proper to add, that Mr. Justice GRIER, one of the majority who decided *Hepburn* v. *Griswold*, had tendered his resignation in December, 1869, to take effect the 1st of February, 1870; and that the decision in that case was not announced until Monday, the 7th of February. The nomination to the Bench of Messrs. STRONG and BRADLEY was made on the same day, but had been prepared the week before, and had been under consideration for some time previous, in consequence of recommendations from the Bar and others, without any reference to the legal tender question.

The statement is as follows:]

LATHAM
*v.*
THE UNITED STATES.

DEMING
*v.*
THE UNITED STATES.

The very singular paper filed by the Chief Justice in these cases, in regard to the order of the Court, by which they are set down for hearing on all the questions presented by their respective records, leaves the court no alternative but to present a reply in the same manner that the statement of the Chief Justice is presented.

The paper itself is without precedent in the records of the Court. On the first day of this month the Court announced, by the mouth of the Chief Justice, that these cases would be heard on the 11th day of the month, on all the issues involved in the record.

In making this announcement the Chief Justice did all that was necessary to prevent any misconception of his opinions by stating that he and Justices Nelson, Clifford and Field dissented from the order. This statement was placed in the records of the Court.

The present statement [that of the Chief Justice], therefore, was not necessary to explain the position of those gentlemen, or to vindicate their action, for it was well understood and was assailed by no one.

It is an effort to take the action of the Court out of the ordinary and usual rules which govern it in the simple matter of deciding when it will hear a case, and what shall be heard in that case, and subject the Court to censure, because it will not consent to have the rights

of the parties in such cases controlled by the vague recollection of some members of the Court, presented only in conference, not reduced to writing, nor ever submitted to the consideration of counsel charged with the conduct of the cases. If this be a just ground of censure, we must submit to it, and will be content to bear it.

In reference to the facts on which the Court acted, it is conceded by all that the cases, having been passed without losing their place on the docket, were entitled to a preference whenever either party should call them up and insist on a hearing. The Attorney-General, on behalf of the United States, did this on Friday, March 25. At the same time he stated that the cases presented the same question in regard to the constitutionality of the legal tender statutes that had been decided in the case of *Hepburn* v. *Griswold*, at the present term, and asked the court to hear argument on that question. Mr. Carlisle, counsel for Latham, was present, and reminded the Court that some six weeks before he had asked that his case might be set down for hearing, and that he now wished for an early hearing, but hoped that the legal tender question would not be reconsidered in his case.

*He did not at that time intimate in any manner that there had been any agreement of counsel, or any action of the Court, which precluded that question in his case.*

The next day being conference day, the Court acted on the motion of the Attorney General; but on Monday morning, before it could be announced, the Chief Justice produced a letter from Mr. Carlisle to him, remonstrating against reopening the legal tender ques-

tion in his case, and insisting that he had a right to expect that the case of *Hepburn* v. *Griswold* would, as to that point, decide his case also; but he did not state in that letter that any order of the Court had been made to that effect, or any agreement of counsel, verbal or otherwise.

This letter of Mr. Carlisle, the only written document, paper or statement ever presented to the Court before its order was announced, as a foundation for refusing to hear the legal tender question in the two cases, was never filed with the clerk, and cannot now be found by us.

The Court, in deference to Mr. Carlisle's statement, made an order that on Thursday, the 31st of March, the whole matter should be heard in open Court. On that day the Attorney-General, who had been shown Mr. Carlisle's letter, appeared and insisted on his motion. Mr. Carlisle opposed it, and in argument gave his history of the cases in this Court. He also argued that from that history he had a right to expect that whatever should be the judgment of the Court in *Hepburn* v. *Griswold* as to the constitutionality of the legal tender acts, should conclude that matter in his case. *But he did not state or rely on any agreement with counsel of the government of the one case by the other, or any express order of the Court to that effect.*

Mr. Merriman, the senior counsel in Deming's case, was present at this argument. He took no part in it. He made no objection to the argument of the legal tender question in his case, and did not then claim, nor has he ever claimed in court, that that question was precluded by any action of the Court, or agreement of counsel.

On full consideration of all that was then before it, the Court announced on Friday morning, the 1st of April, that the two cases would be heard on all the questions presented by the records on Monday, the 11th, ten days thereafter; and at the same time the Chief Justice announced the dissent of himself and the other Justices already mentioned, to this order.

When that day arrived, a letter was presented from Mr. Carlisle, dated in this city, of the Saturday before, in which he said he had not had time to prepare for the argument, and that he had an engagement to try a case in New York on Tuesday, which he had not been able to postpone, and again urged the injustice of a reargument of the legal tender question in his case, and stated that he *understood when his case had been passed, that it would abide the decision in Hepburn* v. *Griswold.* A telegram was also read stating Mr. Merriman's illness. The Court from the bench postponed the hearing for one week.

Since that time the Chief Justice has received a letter from Mr. Norton, former Solicitor of the Court of Claims, who once had some charge in that capacity of these cases, in which he states, that when the cases were continued in March, 1868, he understood that they would be governed as to the legal tender question by the decision of *Hepburn* v. *Griswold,*

Of both these letters, now the only papers on file in regard to the matter, it is to be observed—

1. That they were presented after the Court had appointed a day for hearing all that might be said for or against the motion, and after both parties had had a full hearing, and after the Court had, on full consideration of all that was before it, fixed the day for

hearing, and decided to hear the whole matter in issue. Of Mr. Norton's letter it may be further said, that it was made after Mr. Carlisle's two efforts to prevent a hearing had both been considered and overruled, and is made by a gentleman not now engaged in the cases, without verification, and without notice to any party, or counsel in the case.

2. That neither of them assert that any agreement, contract or promise was made by the counsel of the United States, that *Hepburn* v. *Griswold* should control these cases in any matter of law whatever.

We do not doubt that counsel for appellants and counsel for the United States believed, and in that sense understood, that the judgment of the Supreme Court in *Hepburn* v. *Griswold*, and the other legal tender cases argued at the same time, would establish principles on that subject that would govern the cases now under consideration, and all other cases in which the same questions might arise.

This understanding was no more than the expectation, usual and generally well founded, that a principle decided by this Court will govern all the cases falling within it. But this expectation must be subordinated to the possibility, fortunately rare, that the Court *may* reconsider the questions so decided; and confers no absolute right.

We have thus far considered only what occurred in open Court since the motion of the Attorney-General was made to take up these cases; and in what has been said the Court, consisting of Justices Swayne, Miller, Davis, Strong and Bradley, all concur.

But the paper, to which we are replying, under takes to give a history of the connection of these two

cases with certain others, involving the legal tender question, so much at variance with the records of the Court, and with the recollections of the three Justices of the Court first above named (the other two not then being members of the Court), that we do not feel at liberty to permit it to pass in silence.

This statement invades the sanctity of the conference room, and in support of its assault upon the Court, does not hesitate to make assertions which are but feebly supported by the recollections of a part of the four Judges who join in it, but which are inconsistent with the record of the Court, and are contradicted by the clearest recollections of the other three Judges who then composed a part of the Court, who oin in this answer.

It is attempted, by speaking of these cases as two out of nine, which the Court constantly had in view as involving the legal tender question, to sustain the inference, that they were to be decided with the others, and were submitted to the Court, so far as the legal tender question was concerned, at the same time.

Now, the first and only time the legal tender cases were grouped together in any order of the Court was on the 2d day of March, 1868, when the following order was made of record :

"No. 89. S. P. & H. P. Hepburn *v.* Henry Griswold,
" No. 225. Frederick Bronson *v.* Peter Rodes.

"Ordered by the Court, That these cases stand continued for re-argument by counsel at bar on the first Tuesday of the next term, and that the Attorney General have leave to be heard on the part of the United States."

"No. 35. Mandelbaum *v.* People of Nevada.
"No. 60. The County of *v.* The State of Oregon.
"No. 67. John A. McGlynn, Ex'r, &c., *v.* Emily Magraw, Ex'trix.
"No. 71. Joseph C. Willard *v.* Benj. O. Tayloe.

"Ordered by the Court, That these causes stand continued to the next term, with leave to counsel to reargue the same if they see fit on any question common to them and to Nos. 89 and 225."

The Chief Justice says that there were nine of these cases in all, which were to be governed by the decision of the Court made on the general argument in regard to legal tender. Here are six of them grouped in these two entries standing together. If Latham's and Deming's cases stood on the same agreement, or the same order, why were they not included? It will not do to say that they were carelessly omitted, for the order is evidently drawn with particularity, and there can be no doubt that it includes all that it was intended to include.

Nor will it do to say that these cases could not be included because they had other questions besides legal tender, for the cases of *Willard* v. *Tayloe* and *Mandelbaum* v. *Nevada*, which are in the order, included other questions, and were finally decided without touching that question. The case of *Horwitz* v. *Butler*, which is necessary to make out the nine alluded to, although it involved nothing else but legal tender, was argued by itself after *Bronson* v. *Rodes* was decided. There was, therefore, evidently no general agreement or order, that cases not named should abide those that were, because they involved that question.

It is said that subsequently to the decision of *Hepburn* v. *Griswold*, these cases "were called on sev-

eral occasions, and it was again stated by the Chief Justice from the bench that the legal tender question having been determined in the other cases would not be again heard in these."

This statement is, as we are satisfied, founded in an entire misapprehension. If any statement had been made from the bench that no argument would be heard in these cases of the legal tender question, it would certainly have attracted the attention of the Judges who did not agree to that opinion, and would have met with a denial on their part so emphatic as to be remembered.

The cases now under consideration were numbered six and seven of the docket of this term. They had, therefore, as the records of the Court show, been called and passed on the 8th December, two months before the announcement of the decision of *Hepburn* v. *Griswold*, which was February 8.

It further appears, that on the 10th December the Attorney General moved to dismiss the appeal in Latham's case because it had not been taken in due time. The opinion of the Chief Justice is entered of record overruling this motion, because, though the appeal was not allowed within ninety days, it had been prayed within that time. In all these orders no hint is given that these cases were to abide the judgment in *Hepburn* v. *Griswold*.

Very soon after the decision of *Hepburn* v. *Griswold*, Mr. Carlisle called attention to the Latham case, and asked that an early day be assigned for its hearing. The Chief Justice was about to do this in open Court, when Mr. Justice Miller requested him to take the matter into conference. When the motion was called

in conference, Mr. Justice Miller said that the case involved the legal tender question, and that he hoped it would not be set for hearing until the two vacancies on the bench were filled, as nominations were then pending for both of them. No objection was made to this, and the motion of Mr. Carlisle was postponed indefinitely. The Chief Justice remarked, as those of us who were present well recollect, that he considered the legal tender question as settled by *Hepburn* v. *Griswold*, as far as it went, but none of the Judges gave any intimation that there was anything in the history of these which precluded that question from being considered in them. If it could not, there was no reason for postponing their hearing for a full bench, as was done, for they are otherwise quite unimportant, either in principle or amount, and were entitled to a speedy hearing, as they had been long delayed.

Conceding, as we do freely, that our brethren believe that such an order or statement was made verbally, should it govern our action?

We cannot consent to this, because if any order or statement was made orally, unless it was reduced to record, or is assented to or admitted by the counsel for the United States, it is no sufficient legal ground for refusing to hear the appellee on any defence found in the record of these cases.

In support of this we hold the law to be that without some order of Court made of record, or some written stipulation signed by the party or his counsel, or some verbal agreement of the parties established to the satisfaction of the Court, no party can be deprived of the right to any defence in this Court which the record of his case presents.

Much stress is laid in the paper we are considering upon the long deliberation, the clear majority and the liberality of the Court in giving time to the minority to file the dissent in *Hepburn* v. *Griswold*, and we are freely told the steps in conference which led to the final result.

The minority in that case are profoundly impressed with the belief that the circumstances of that decision, if well understood, would deprive it of the weight usually due to the decisions of this Court. The cases had been on hand eighteen months or more. There was no pressure for a decision. There was one vacancy on the bench. It was believed that there would soon be another. Under these circumstances the minority begged hard for delay until the bench was full. But it was denied. When, after all this argument and protracted consideration, the case was taken up in conference, and was there discussed for three or four hours, in which discussion every Judge took part, the vote was taken and the Court was found to be equally divided on affirming or reversing the judgment of the Court of Appeals of Kentucky. * Before the conference closed, however, the vote of one of the Judges who had been for reversing the judgment was changed. The circumstances under which this vote was changed were very significant, but we do not deem it proper to state them here. Without that change no opinion could have been rendered holding the legal tender statutes unconstitutional.

The question thus decided is of immense importance to the government, to individuals and to the public. The decision only partially disposed of the great question to which it related, and has not been received by

the profession or by the public as conclusive of the matter. If it is ever to be reconsidered, a thing which we deem inevitable, the true interests of all demands that it be done at the earliest practicable moment.

We did not seek the occasion, but when the case seemed fairly before us we could not shrink from our duty as we understood it.

We could not deny to a party in Court the right which the law gave him to a hearing on all the defences which he claimed to have. When, on the other hand, the rules of the Court did not admit of a rehearing in the case of *Hepburn* v. *Griswold*, we did not attempt to strain or modify those rules to reach the question. In this case, as in all others, we have endeavored to act as the law and our duty required.

The foregoing paper of eighteen pages [in the manuscript] was prepared and agreed to as the reply of the Court to a paper filed by the Chief Justice on behalf of himself and Justices NELSON, CLIFFORD and FIELD. That paper has been withdrawn by them from the files of the Court, and this is, therefore, not filed.

We all concur in the statements of the foregoing paper as to the reasons for our action in the matter to which it refers, and the statement of facts we declare to be true so far as they are matters which took place while we were respectively members of the Supreme Court.

WASHINGTON, April 30, 1870.

N. H. SWAYNE.
SAM. F. MILLER.
DAVID DAVIS.
W. STRONG.
JOSEPH P. BRADLEY.

[NOTE.—The original draft of the statement, as drawn by Justice MILLER, from the asterisk on page 71, concluded in the words printed below. But, on consultation with the other Justices at the time it was thought best to omit it, as Justice GRIER was still living, and might be pained if it should come to his knowledge. Justice MILLER, however, preserved it, and placed it in the same envelope with the statement as modified, where it was found after his death. It was as follows:]

* This would have affirmed the judgment, but settled no principle.

An attempt was then made to convince an aged and infirm member of the Court that he had not understood the question on which he voted. He said that he understood the Court of Appeals of Kentucky had declared the legal tender law unconstitutional, and he voted to reverse that judgment. As this was true, the case of *Hepburn* v. *Griswold* was declared to be affirmed by a Court equally divided, and we passed to the next case.

This was the case of *McGlynn, Ex.*, v. *Magraw*, and involved another aspect of the legal tender question. In this case the venerable Judge referred to, for whose public services and character we entertain the highest respect, made some remarks. He was told that they were inconsistent with his vote in the former case. He was reminded that he had agreed with a certain member of the Court in conversation on propositions differing from all the other Judges, and finally his vote was obtained for affirming *Hepburn* v. *Griswold*, and so the majority, whose judgment is now said to be so sacred, was obtained.

To all this we submitted. We could do nothing else. In a week from that day every Judge on the

bench authorized a committee of their number to say to the Judge who had reconsidered his vote, that it was their unanimous opinion that he ought to resign.

These are the facts. We make no comment. We do not say he did not agree to the opinion. We only ask, of what value was his concurrence, and of what value is the judgment under such circumstances?

That question thus decided is of immense importance to the Government, to the public, and to individuals. The decision only partially disposed of the great question to which it related, and has not been received by the profession or by the public as concluding the matter. If it is ever to be reconsidered, a thing which we deem inevitable, the best interests of all concerned, public and private, demands that it be done at the earliest practicable moment.

We have not sought the occasion, but when the case is fairly before us, if it shall be found to be so in these cases, we shall not shrink from our duty, whatever that may be. For the present, we believe it is our duty to hear argument on this question in these cases.

Whether the judgment of the Court in *Hepburn* v. *Griswold* shall be found by the Court to be conclusive, or whether its principles shall be reconsidered and reversed, can only be known after the hearing; and in the final judgment of the Court, whatever it may be, we are satisfied there will be acquiescence.

At all events, the duty is one which we have not sought—which we cannot avoid.

# PERSONAL,

# POLITICAL, HISTORICAL

AND

# PHILOSOPHICAL.

## BURR, AARON.

I have just finished (November 29, 1837) the perusal of the second volume of Davis's Memoirs of Aaron Burr. I took up that work with the most bitter prejudices against Burr, but I must confess that a perusal of it has very much softened, if not entirely eradicated, my detestation of his character. Burr, no doubt, was a persecuted man. He had intrigue, perhaps too much like Pope, he practiced it when a straightforward course would have answered his turn as well. This rendered him suspected; being suspected, made him suspicious; being thus suspicious and suspected, his conduct toward General Hamilton, on the one hand, and the conduct of the administration towards him in relation to the liberation of Mexico on the other, are accounted for. He went too far in calling out General Hamilton, although he received serious provocations which had never been caused, nor revenged by similar conduct on his part. He was above abusing a rival, but he would take all honorable means of triumphing over him. Hamilton was not above abusing a rival; but he would not go to such lengths, perhaps, to secure a triumph. As to his being guilty of treason in 1806 and 1807, there is very little ground to imagine such a thing. Aaron Burr was not that devil incarnate which I had supposed him to be.

The letters which passed between him and his daughter are some of the finest models of epistolary writing I ever saw. I think them superior to Lady Mary W. Montague—not in mind, nor in polish, nor in

literary merit, nor in refinement, but in that playful ease, and in that eternal sprinkling of the purest attic salt which should characterize the epistolary. They are perfect specimens of letters. Everybody can see that the author of the book has crowded as many of these letters into it as he possibly could, in order to exhibit Burr in his most attractive light—his private relations—and thus abstract the attention of the reader from the events of his public life. Though, on a perusal of the book, one could not point out any particular event of Burr's public life on which the author could have been more full than he has been. On the whole, the work is a good one, in my view, and will tend to repress the imputation of sinister and vindictive motives to public men, by teaching the lesson that a man may be hunted down as a monster in society, who, to his own intimate friends, exhibited the tenderest, noblest feelings of our nature.

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## A LOVE LETTER.

SEPTEMBER 6, 1838.—"This world has not so many charms for me as it once had. I have been tossed on its ruder surges so long that I have learned to look for pure and abiding happiness in some more pure and abiding world. But life must be spent here; duties must be discharged here, and I should be ungrateful to my Maker if I did not believe that He has provided me with some source of happiness connected with the situation in which He has seen fit to place me. But, where is happiness to be found. She

is not seen in the giddy world of fashion, nor does she smile on the plumes of vanity and conceit. She is social in her nature, and domestic in her habits. Sweet in her disposition, her smile is bewitching. Tenderness beams in her eyes, and affection throbs in her heart. Her own fireside is her empire; beyond it her wishes never extend. Good sense and intelligence are her attendants; religion is her friend." Such is the picture which I have often drawn of the purest earthly bliss—a picture which has had its counterpart in real life, but which I have had little hope ever to realize.

(NOTE.) This extract is part of a love letter which, however, was never sent to the person for whom it was intended.

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## ADMISSION TO THE BAR.

DECEMBER 29, 1839.—On Wednesday evening, November 13, 1839, I was examined, at Trenton, before the Justices of the Supreme Court of New Jersey, on application for license to practice law; and on the next day, licensed and admitted to practice as an attorney at law and solicitor in chancery in said State. The following Friday I started for Albany, and after staying at home nearly five weeks, returned to Newark Wednesday, 18th inst., where I still remain, undecided where to settle. Whilst at home, I witnessed much of the Helderberg disturbances, which elicited a call from the Governor of New York on the militia to suppress them. No blood was shed but that of divers pigs and fowls.

(Signed) J. P. BRADLEY.

## A PICTURE.

George B. Corkhill, of Washington, D. C., lately purchased an engraving, a little old and rough looking, exhibiting a Judge with ass's ears sitting on a tribunal, with Justice blindfolded on his left. Before him an old man brings forward a female figure, who holds a torch in one hand, and with the other clutches by the hair a little imp, who makes wry faces and kicks about resistingly. Behind the female figure are some attendants of hers, one of whom carries a drag-net on her shoulder. Guards stand at the door half concealed. In the extreme left hand upper corner an open window shows a demon in the distance on the wing, dragging away a female figure, as if it were a spirit taken to perdition. The engraving has a legend, as follows:

> Attrahit insonte perjura calumnia Apelle.
> In jus immiscens fanda nefanda simul
> Auriculis judex insignis tepora aselli
> Jus pariter reddit collite cu comite
> Temporis at demum quae fertur filia seros
> In lucem profert qui latuere dolos.

Which may be freely translated thus:

> "False swearing Calumny drags into Court
> Apelles innocent. The stupid Judge,
> Confounding Right and Wrong, his temples crowned
> With Ass's ears, with blindfold Justice by,
> Awards alike to both—the Good—the Bad.
> Time's daughter (Truth), who now at length is brought,
> Reveals the hidden Fraud, alas, too late!

The moment seized by the artist seems to be that at which Truth, with torch in hand, and clutching by the hair the struggling imp, representing the fraud

that has lain concealed, and which has just been dragged from the water, reveals to the Court the awful mistake it has made. The Judge seems greatly surprised, and poor Justice hangs down her head in shame. The old man who brings "Truth" forward may be either "Time" or the agonized father of the victim, who was unjustly condemned, and whose spirit is seen to the left carried away by a demon. The drag-net of "Truth," held by one of her attendants, shows her perseverance in finding out the fraud, and reminds us how all hidden things are brought to light by her indefatigable efforts, even from the bottom of the sea.

The engraving has inscribed on a slab or caryatides, in the body of the piece, this note: "Georgius Ghisi, Mant. f 1560." That is, executed by George Ghisi of Mantua 1560. At the foot is inscribed on a scroll, "Luca Penis. in." That is, "Luca Penni's design." Luca Penni was born 1500, and was a scholar of "Raphael." Ghisi of Mantua was a generation later. In Spooner's Biographical history of the Arts, under the title "Ghisi, George," is a list of some of Ghisi's engravings, and amongst others, this, "An allegorical subject representing a Judge on his tribunal with ass's ears, *after Luca Penni.*" The engraving purchased by Mr. Corkhill is probably a French copy. I judge that it is not an original, because wanting the artist's monogram, and because it has an imprimatur, "cum privilegio regis." It may have been copied in the reign of Louis XIV or XV.

(Signed) J. P. BRADLEY.

JUNE, 1882.

201 "I" STREET, June 9, 1882.

DEAR MR. CORKHILL:

In looking over my version of the legend of your engraving, it occurs to me that the "immiscens fanda nefanda simul" may be attributed to the Prosecutor, "Calumnia," rather than to the Judge, whose greatest crime appears to be his stupidity. Correcting it on this theory, the rendering would be:

False swearing Calumny drags into Court
Apelles innocent, and guileful pleads,
Together mixing up things Right and Wrong.
The Judge with ass's ears on temples grown,
Like judgment gives, with blind associate by,
Time's daughter (Truth), who now at length is brought,
Reveals the hidden fraud, alas, too late.

This is more liberal, and seems to be more in keeping with the original.

Yours truly,

(Signed) JOSEPH P. BRADLEY.

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## TRANSLATION OF LUCAN'S EULOGY ON POMPEY.

Casta domus luxuque carens, corruptaque ninquam
Fortuna domini, clarum et venerabile nomen
Gentibus, et multum nostrae quod proderat urbi.

A household chaste, of luxury devoid
And by its master's fortune uncorrupt.
A name renowned and venerated wide
Among the peoples, and that hath enhanced
Our city's weal.

*Lucan's Pharsalia, IX.*

1884.

## TO MY SISTER "MARY," MARCH 14, 1886.

The clouds are gathering, soon the night will come,
And we shall reach our long-expected home.
But from the mile post marked with "Seventy-three"
I hail you, sister, where you follow me;
Six stages back is all the space between,
For you, as I, the best of life have seen;
The most, if not the best, for who can know
Which is the best for mortals here below,
Youth, hope and fancy, or the sober close
Of life's long trials settling to repose,
Lit up by gleams reflected from that shore
Where wait our loved ones who have gone before?
They wait, they beckon, why should we withstand
The law that draws us to that happy land?
Then, cheerful, onward, let us hence pursue
The journey left that hides that land from view.

(Signed) J. P. BRADLEY.

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## ANSWER TO A REQUEST FOR A MOTTO.

WASHINGTON, 19th Sept., 1887.

DEAR SIR:

I know of no motto truer or more to be studied by a young man than the following:

Haec sunt Fortunae optima dona:
Sana mens in corpore sano,
Sedulus labor, probitas pura.

The best gifts of fortune are these:
Health of body, a sound understanding,
Pure integrity, industry untiring.

Yours truly,

(Signed) JOSEPH P. BRADLEY.

MR. ELLERY S. AYER,
Boston.

## DREAMLAND.

I do not know whether I am singular, but I have a dream-world to which I often repair in sleep. I do not refer to those phantastic scenes and incidents which have no rational connection or cause, and which often attend our unquiet slumbers, and leave little trace behind, or any deep impression. My dream-world is very different. It has generally the same phantasmagoria of surrounding objects and scenery, and is altogether a pleasant and homogeneous system of things. The singularity of it is, that it has this constant sameness after the lapse of years. The principal scene is located in a city, having a great resemblance to the City of Newark, where I formerly resided and in this underworld city I am always residing and have an office in the business part of the town, on the ground floor, fronting on the main street; but it is usually closed in consequence of my prolonged absences. I sometimes go in to look over some old and rare books that I keep there—books the like of which I never saw in my waking moments. One of these books is at least a yard in height, and half a yard in width, and at least four inches thick. The binding is very old and heavy, the corners being much frayed. The print is large and in double, and sometimes treble, columns on the page. It is hard to tell what the subject of it is. It contains chapters on law, and on chronology and on philosophy and on religion, and I find some very curious things in it, some of which, if I get time, I will relate. There are other old books of various sizes, some nearly as large as the one I have described, and thence ranging down to

ordinary quartos and royal octavos. I have generally some anxiety when I visit the office to see whether any of the books have been stolen. I sometimes find them disarranged, but generally put them in their proper places again. My principal trouble arises from the improvements that are often going on in the neighborhood. They have been building a row of brick houses in the rear, on the next street, and the lots join. I am constantly fearful lest the workmen will come on to my lot and get into my back windows and carry off some of my books, and then sometimes when I am absent, and one of my clerks, or young men, occupy the office part of the day, other lawyers come in and borrow the books; and some forget to return them. In going up and down the street, I meet many of my old acquaintances, long since dead, and have many interesting conversations with them. I visit this dreamland, sometimes as often as once a month, sometimes only after an interval of a year or more, but I always find it the same, and the old books the same. The impression of its reality has become so strong that even in my waking moments I sometimes imagine for an instant that I possess those old books somewhere, and do not recover from the hallucination until I begin to inquire with myself where they are.

WASHINGTON, January 27, 1889.

## THE MARITAL RELATION.

ASSOCIATE JUSTICE BRADLEY IN THE "NORTH AMERICAN REVIEW" FOR DECEMBER, 1889.

As marriage and the family institution constitute the foundation and chief corner stone of civil society, it is of the greatest moment that the marriage-tie should never be dissolved save for the most urgent reason. I cannot assent, however, to the doctrine that it should never be dissolved at all. Mere separation, though legalized, would often be an inadequate and unjust remedy to the injured party, who would thus be subjected to an enforced celibacy. This might suit the notions of those who regard celibacy as a virtue, but would fail to approve itself to those who take a wider and more charitable view of human nature. The divine law, which says, "What God has joined together let not man put asunder," immediately adds an exception, "save for the cause of fornication," showing what the law of nature dictates, that the case is not governed by any iron rule of universal application. The law, "Thou shalt not kill," has its necessary exceptions, a disregard of which would render it mischievous in a high degree. I know of no other law on the subject but the moral law, which does not consist in arbitrary enactments and decrees, but is adapted to our conditions as human beings. This is so, whether it is conceived of as the will of an all-wise Creator, or as the voice of humanity, speaking from its experience, its necessities and its higher instincts. And that law surely does not demand that the injured party to the

marriage vows be forever tied to one who disregards and violates every obligation which it imposes; to one with whom it is impossible to cohabit; to one whose touch is contamination. Nor does it demand that such injured party, if legally free, should be forever debarred from forming other ties through which the lost hopes of happiness for life may be restored. It is not reason, and it cannot be law, divine or moral, that unfaithfulness, or wilful and obstinate desertion, or persistent cruelty of the stronger party, should afford no grounds for relief. The most rigid creeds, to the contrary, have found methods of dispensation from the theoretical rule. And if no redress be legalized, the law itself will be set at defiance, and greater injury to soul and body will result from clandestine methods of relief. Yet so desirable is the indissolubility of marriage as an institution, so necessary is it to the happiness of families and the good of society, so pitiable the consequences that often flow from a dissolution, that every discouragement to such a remedy should be interposed. Not only should the Judge take every care to see that just cause exists, but that no other remedy is possible. No jugglery or privacy should be tolerated, however high in station the parties may be. Investigation of the truth should be thorough and open, and should be a matter of public concern, participated in by the public representative of the law. It should be regarded as a quasi-criminal process, if not accompanied with criminal sanctions. Only serious and even severe methods of administering the law will be sufficient to repress the growing tendency of discontented parties to rush into divorce courts.

## RUTGERS' ALUMNI DINNER.

LETTER OF "REGRET" SENT BY JOSEPH P. BRADLEY, DATED WASHINGTON, FEBRUARY 26, 1891.

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L. LAFLIN KELLOGG, Esq.,

DEAR SIR:—I am sorry that I cannot be present to-morrow evening to join our alumni at their annual dinner, and to answer personally to the toast of "The Bench." I can only say in this circumscribed way, that "The Bench" of the forum is quite as uneasy and anxious a seat as "The Bench" of the country schoolhouse, or the old stone college, without the opportunity of cutting your name on it with a jackknife. That must be done with a different weapon. How deeply we all sympathize with each other on looking back, with a sigh, to those happy days when the only care was to con a lesson well, or to make a creditable recitation; and yet, as the boy is father to the man, so the college is mother—alma mater—to every branch of professional life, looked back to, looked up to as the source of all that is good or excellent in years of riper development. But the standards of attainment and approbation, how different! It is not now a question of Greek roots, or mathematical abstractions, with anxious desire to win a professor's smile; it is a question of honest duty performed in the hard struggles of life; of wisdom daily acquired; of "increasing in favor with God and man," each of us squaring his life, or trying to do so, by some standard appropriate to his calling; the merchant, by probity and diligence in business; the physician, by the most advanced

analysis of human ills and their remedies; the divine, by the lofty ideals of sacred literature and the moral manifestations of modern society; the lawyer, by studying the fountains of jurisprudence, as applied to the phases of every-day business; the jurist, by the lights of truth and justice, from whatever source derived, and all with a watchful world for spectators and audience and judges.

Before us, on the Bench, stands the awful Goddess of Justice and Law, watching every word and weighing every decision; if we make a mistake, sending a chill through every vein; if we decide right, rewarding us only with a kindly nod of approval, but leaving us to incur small thanks, and often deep curses, from those whose cases we are called upon to determine. And, how fearful is the abiding consciousness, that, however just our decisions may be, wretchedness, poverty, ruin on one side or the other, may hang on our words. Rejoice, fellow Alumni, for your freedom from such trials. Your pursuits do not necessarily involve, as our functions often do, the ruin of fortunes and the destruction of all hope in the world.

So the Bench greets you with the wish that you may never have occasion to approach it, except as idle and disinterested spectators, or with an invitation to another "Alumni" dinner.

Let me give you something new and fresh: "Sol justitiae et occidentem illustra."

## EQUALITY.

"We hold it to be self-evident that all men are created equal." This is our creed as a nation. But the question of importance is, in what respect equal? Not equal in mind, for this experience teaches us to be untrue. Not equal in compared vigor, for *this* is contrary also to experience. Not equal in the dispensations of Providence, nor equally favored by fortune. In fine, there is scarcely one thing in which we may be said to be equal. In what sense is it, then, that we are declared to be equal by the Declaration of Independence? The answer must be, *politically equal.* But again, wherein does this political equality consist? Does it consist in the distribution of wealth, and a common possession of the comforts and elegancies of life? Certainly not; or else the great apostles of our liberty; our Washington, our Franklin, our Adams, our Jefferson, were traitors to their creed, and selfishly dismissed from their intentions the design of realizing the great doctrines which they so solemnly avowed. Besides, it cannot be in this sense that they meant; for in this sense it would be nonsense and vanity. The luxuries of life do not consist merely in dollars and cents. These, it is true, might be distributed with a comparative ease amongst the expectant throng. But there are your music, your paintings, your other trophies of art; there are your stores of literature, your black letter, your dead letter, your antiquities, your offsprings of the muse, there are your refined emotions, your generous feeling, your whole aspirations—all these, and ten thousand more are real, bona-fide luxuries, that not only occupy, but enchant

hundreds and thousands who are susceptible of what they are calculated to inspire. Now, if one class of luxuries may be possessed in common, there is no reason why every class may not be—as, if we are all created equal, it were unjust that any should have at their command sources of delight which are denied to the rest. But there are many species of luxury, those in particular which I enumerated, which the great mass of mankind are *incapable of enjoying*, and of which they ever would be incapable, how equably soever the grosser attendants of prosperity might be distributed. Hence an equalization of wealth would not be followed by an equal power of enjoying life (which is the object of wealth), and the very object proposed would never be attained. Further, a dull equalization of wealth would smother enterprise, produce listlessness, and induce a man, instead of aiming to support himself by his own exertions, to depend for his support upon the rest, conscious always that however indolent and inactive himself might be, he would still share an equal portion with his fellows—with even the most industrious of them; for any attempt to punish inactivity by subjecting it to want, would be an admission of the principle that industry should be rewarded, and this is the great principle that supports the present machinery of society. Leaving then the notion that community of wealth is meant by the equality alluded to in the Declaration, what else, may we ask, can it mean? Does it mean social eqality? Such a state would make all the classes (I do not say orders) of society commingle their intercourse; would introduce the cobbler into the most elegant drawing

room to take a cup of tea with the gayest belle of the town, or else, perhaps, to debate with grave Senators on the affairs of State. Could this have been meant? Certainly not. This is the least possible of all meanings that could be attached to the term. Men *will* choose their own company in whatever state of society you may choose to place them. This is the last vestige of liberty with which they are willing to part, and any state of society which forbids a man this privilege, I shall neither contend for nor against. In what, then, can this *political equality* consist? Does it consist in each man having an equal voice in the civil government of his country? This is what I conceive it to be. But this is exercised originally, and only so. After the elements of society are once organized in the least, after some one has exercised the privilege (which belongs equally to all) of nominating a chairman or a president in any meeting of the citizens—after that moment—after the choice of that chairman has been approved, much of the authority, which till then was equally exercised by *all*, is now confided to him. If this meeting adopt a constitution for the regulation of their conduct, a constitution which any soul of them had the privilege of proposing, then and thereafter that constitution is charged with much of the authority which, till then, had existed only in the people. Thus, by public decrees and constitutions, the people deposit a certain portion of their own power with particular individuals, and these individuals have, then, a right which the multitude has not, of making laws and administering government. Rights, it will be observed, are delegated to them. They are not made a privileged class. We have *no orders* of

society. No *privileged classes.* We have a plenty of classes, and this class is one of them. It is made their *business* and their *duty* (they might have declined if they pleased) to attend to public matters. It all arises from the necessity of the division of labor. All cannot rule, nor can all be ruled. All cannot plow, nor can all sow, nor reap. No more can all neglect such employments, else the race would become extinct. Each has his business to perform, his part to act. It is a duty he owes to the rest as well as to himself. In this way, all are equally *dependent, equally necessary,* to the body politic. Hence, all have an equal right to govern the whole where that right has not been previously conveyed away. This is *Political Eqality.*

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## POLITICAL ECONOMY.

Prof. Perry defines Political Economy to be the *Science of Exchanges,* or, in other words, the *Science of Value.* This does not accord with my notion of the science. Exchange and value have much to do with political economy, and play an important part; but it seems to me to be rather *the science of producing National Wealth;* that is to say—public and private resources.

The questions which political economy professes to answer, or ought to answer, are such as these: What are the best methods of supplying a given society with all its material needs? Under the circumstances, is agriculture essential? If essential, how can it be

encouraged? May it be encouraged at the expense of manufactures? Or is it better to leave both to the natural laws that govern action? Will the erection of railways be advantageous? Or may the capital expended on them be laid out to better advantage? If the means of intercourse and transportation are sufficiently subserved by water in the particular case, and if capital expended on railways would be wasted, would the employment of such surplus capital in the erection of steam engines and machinery be beneficial so as to multiply the forces of production? Or, would it be better to invest it in commerce with foreign countries? And, if the same amount of wealth could be created by each course, which would be the preferable in the long run, as affecting the future well-being of the State? Is the encouragement of the fine arts calculated to promote the physical or material prosperity of society?

In short, we expect political economy to tell us the effect of all measures and all pursuits on the general supply and distribution of material resources, and consequently, upon the national well-being, so far as material resources are concerned.

To produce national valor, military science is to be consulted; national virtue, moral science; national intelligence, educational science; but the secret of national wealth must be sought in the science of political economy. The study of all these sciences may be necessary to understand the entire necessities and well-being of a State; for intellectual and moral development and military power may be as essential as wealth and resources to the national prosperity and glory, and each of these aspects of social great-

ness may be but necessary complements of the others all being required to produce that symmetrical completeness which alone can produce true national aggrandizement.

Professor Perry, adopts Frederick Bastiat's definition of value as the relation between two services exchanged. He also dilates on the excellency of the word "service" for explaining the principles of political economy. But I think he uses the word service ambiguously, namely, both for the *efforts* or *labor* by which one performs a service, and for the utility which it subserves to him who receives it. Thus, we say: A rendered *service* to B, which was of great *service* to him; *i. e.*, A performed a labor which was of great *utility* to B. These ideas are very distinct the one from the other. The *same labor* may be of *great utility* to-day and no utility to-morrow. Now, the value to me is the utility to me.

Professor Perry defines utility to be the capacity which any thing or any service has to gratify any human desire.

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## FENIANISM.

Whilst equal representation and industrial privileges are to be sought in every legal way, political separation or independency for Ireland is a delusive dream. Effort in that direction will only injure the Irish cause. For, think: the British Empire is the most powerful in existence. It embraces the earth, and all its power would be put forth to prevent an independent kingdom so near its heart as Ireland. It

is as if Lombardy (or Cisalpine Gaul) had attempted independence in the height of the Roman power. When the British Empire goes into disintegration (which it will at some future time) Ireland may be independent. But that catastrophe is not to be expected, not even wished for, now. The centers of civilization are not so distributed, nor are its forms so perfect as to make it desirable. America, perhaps, might be the gainer, for she is now subservient to the financial supremacy of England. But the world would be an immense looser, and in the general loss, even America would participate. Ireland could not anticipate much benefit from such a cataclasm. She would be deeply involved in it.

But at all events, whoever seeks to make Ireland independent must aim at nothing short of the destruction of the British Empire, whatever other consequences may ensue. That is the necessary objective.

# THE POLITICAL EXPRESSIONS

OF

# JOSEPH P. BRADLEY,

COMPILED FROM

SPEECHES AND ARTICLES WRITTEN BY HIM.

Published in the *Newark Daily Advertiser* at different periods during 1860–1862.

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## MR. BRADLEY'S RECORD.

As the position and views of J. P. Bradley, Esq., on public matters in time past, are a matter of some interest at present, we have taken the pains to gather from the columns of the *Advertiser* various reported speeches made by him in 1860 and 1861, and articles from his pen.

These pieces indicate very clearly the views which Mr. Bradley is well known by his friends to have entertained and freely expressed. That his views on the Slavery question and compromise with the South, previous to the breaking out of the Rebellion, were very conservative, is well understood wherever he is personally known. He took a deep interest in the efforts to bring about a compromise without the effusion of blood, in December, 1860, and January and February, 1861. Amongst other things, he drew up two articles amendatory of the Constitution, and pressed them upon the attention of the famous Committee of 33, appointed by Speaker Pennington, under

a resolution of the House of Representatives. At one time the indications were quite favorable for the success of these articles in committee—a number of leading Republicans having been induced to advocate them, and it being well understood that they would have been entirely satisfactory to all the Border States.

The articles referred to, with a brief introduction, were published in the *Advertiser* December 3, 1860, the day of the opening of Congress. They are as follows:

### COMPROMISE.

No compromise is good for anything unless founded on justice. The fourth article of the Constitution of the United States requires and mutually pledges, that fugitives from justice or service, from one State, shall, on demand, be delivered up by another where they are found. Justice requires that if this be not done, satisfaction should be made. Justice also requires that the citizens of the South, as well as the North, should have a fair opportunity to emigrate, with their property, to the territories which have been purchased with the common treasure. But as slave labor and free labor do not prosper together, expediency demands a division of those territories between the parties. No business man can say that these are not the dictates of justice, as between the parties. The following terms of compromise are based on these ideas, and we suggest them for consideration:

[Amendments to the Constitution of the United States, to be proposed by Congress to the Legislatures of the several States for adoption; requiring a two-third vote in Congress and a ratification by three-fourths of the several States.]

ARTICLE XIII.

Slavery or involuntary servitude, other than for the punishment of crime, shall not be permitted in any of the Territories of the United States north of thirty-six degrees and thirty minutes north latitude; and shall not be prohibited in any of the said Territories south of that parallel; *provided*, however, that any State which may be formed out of any portion of said territory, shall have full power in the premises within its own bounds, after the lapse of twenty years from its admission into the Union, and not before; *and provided, also*, that any person escaping into any such State or Territory, from whom labor or service is lawfully claimed, shall be delivered up on claim of the party to whom such service or labor may be due according to the fourth article of the Constitution, and any laws passed in pursuance thereof, as heretofore.

ARTICLE XIV.

If a person held to service or labor in one State, under the laws thereof, shall escape into another, shall, in due form, be claimed and identified by the party to whom such service or labor may be due, in accordance with the fourth article of the Constitution, and any laws passed in pursuance thereof; and by reason of rescue or other forcible interference with the due course of law, shall not be delivered up on such claim according to the said fourth article, the said claimant shall be indemnified, therefore, by the county in which said fugitive shall be so claimed, which indemnity may be sued for and recovered in any Courts of the United States.

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The next article on the subject from Mr. B.'s pen was published December 15, 1860, and was embodied in an editorial in the *Advertiser* of that date. It was as follows:

"If no better remedy presents itself, let amendments to the Constitution be proposed by Congress and ratified by three-fourths of the States, completely indemnifying holders of fugitive slaves, and giving the slaveholding States a fair division of the public territory. This would obviate the constitutional objections to the Missouri compromise. The territories were

purchased by the common treasure, and it is just that the South as well as the North should enjoy the benefit of them. But free labor and slave labor cannot prosper together. Therefore it is fitting and expedient that these territories should be fairly divided. This would designate to each party their proper rights, and would prevent any unseemly collisions. Let this division be made fairly, and let it be made for all time. This is just and wise. It cannot fail to meet the approbation of the requisite number of States. The people of the North are not unfriendly to those of the South. The charge to the contrary is a slander. Noisy and blustering persons, both at the North and at the South, utter many foolish and crazy speeches; but the mass of the people have no sympathy with them. This we know to be so at the North, and we hope it is so at the South. We are sure it would be so if the people in that section clearly understood the true feeling of the North towards them.

"In such an exigency as the present no party feeling should be permitted to intermingle. But are there any reasons why the Republican party should not co-operate in such a settlement of the controversy as that which is indicated?

"The Republican party (unjustly, we know) is deemed a sectional one; and is held responsible for arousing a strong sectional feeling—a feeling of animosity to institutions on one hand, and jealousy on the other. A disruption of the Union will be unjustly laid to it. But it will, nevertheless, be laid to it. It is, therefore, as much the interest of the Republican as of any other party to co-operate in such measures as may lead to an honorable and just settlement of existing difficulties.

"But rightly viewed the healing measures proposed are in strict conformity with the views and principles of that party. This will appear by attention to the following propositions:

"The Compromise of 1850 resulted in the admission of California as a free State, though situated in part south of the Missouri Compromise line; and in the enactment of the Fugitive Slave law, leaving the Missouri Compromise line in all other respects undisturbed. It was supposed that this settlement would be satisfactory to the country, and forever quiet agitation.

"But the rapid settlement of Kansas, and its immediate proximity to the slave property of Missouri, opened a door for renewed and angry controversy. The South sought to occupy that Territory, as an off-set to California. To effect this object, the Kansas and Nebraska act was promoted by Mr. Douglas and passed by Congress in 1854, by which the Missouri Compromise was repealed. The decision in the Dred Scott case was used for the furtherance of the same purpose.

"At these manifestations of the rapid strides made by the slave power, the North rose in the shape and form of the Republican party. Its special mission was to drive back the tide of slavery within its proper limits—not by waging war on the South or by ignoring the obligations of the Constitution—but by rescuing the territories of the Union from the unjust grab of the slave power.

"If, now, the Republican party vigorously support a Constitutional provision by which the nation is brought back to the Missouri Compromise, can it be

justly accused of being false to the principle of its organization? On the contrary, no course could be more compatible with it. No act could more fully consummate the mission of the Republican party.

"This object attained, that party has still enough on its hands to do. To it naturally falls the championship of the industrial interests of the country. In the pursuit of this object, which is purely a national one, the party will receive the co-operation of the conservative party of the South, and the two will form one great national party of impregnable strength.

"As to the other point, the indemnity of owners of fugitive slaves rescued or withheld, it is a matter of simple justice. Each State rests under a clear constitutional obligation to restore fugitive slaves when demanded. If they fail to do so, it is clear that the owner should be indemnified, and the delinquent parties made to bear the loss.

"Thus on party, no less than on patriotic grounds, every consideration of right and expediency leads us to the same conclusion. We assure our Representatives and the country that they will have the voice of New Jersey in favor of every honorable effort which can be devised for preserving the national existence."

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[Published December 28, 1860.]

## PARTY OR COUNTRY?

St. Paul knew that meat which had been consecrated to idols was just as harmless as that which had never undergone such an absurd formula. But many uninformed Christians had not that degree of

knowledge; and if they saw him eat it, they would either be scandalized, or else infer that a religious respect for the idol was not inconsistent with the Christian faith. "Wherefore," said the Apostle, "if meat make my brother to offend, I will eat no meat while the world standeth." This is a noble instance of that charity which our divine religion inculcates.

The Republican party has succeeded in electing its candidate for the Presidency. It says that it means nothing but fealty to the Constitution, and intends no invasion of the rights of the South. This is well. But the South believes otherwise. The South may be uninformed, or wrongly informed, on the subject. But, nevertheless, it is a fact that a great deal o exasperation exists; and exasperation has led to acts and declarations *which are leading to the disruption of the Republic.*

In all this the South may be very wrong—undoubtedly is very wrong. The South, especially South Carolina, has acted very unjustifiably, not to say treasonably. There is no justification for secession—which is simply rebellion. And if the South was going to injure itself alone, it might, perhaps, be a just retribution to let it separate from the North. But it will not injure itself alone. In breaking the ties that connect us together, the South would bring ruin on the common country. The fatal act would bring disgrace on free institutions; it would prove what the advocates of despotism are anxious to prove, the incapacity of mankind for self-government; it would destroy the prestige of this nation, and all the associations dear to freedom, which are connected with it; and, in this way, independent of any consequences to our material

interests, it would involve ruinous consequences to the whole American community, and to the cause of civil liberty throughout the world.

Of this there can be no doubt. Vain is the hope of re-establishing a portion of the shattered fragments of a divided country into a new government of the North, to be based on firmer foundations and cemented together with a more fervent loyalty than the present government has enjoyed. *Those who hold out this hope are deceiving us.* They are either self-deceived or they are inflamed with personal ambition—animated by that bad spirit which had rather rule in hell than serve in heaven.

*The choice is before us,* DISUNION, with probable civil war; or CONCESSION and peace. But will concession bring peace? and can peace be secured by honorble concession? Of this, not the slightest doubt exists. All the South asks is a guaranty that the victorious North will not trample on their rights. Give them, in the first place, substantial security that their fugitive slaves shall, if demanded, be returned; or that they shall receive the value of them if rescued out of their hands. This is a just demand. They have a right to ask it. They do not now practically receive the benefit of that article of the Constitution which requires their fugitive slaves to be delivered up. In attempting to secure the benefit of it they have to run the risk of being mobbed, or of being delayed by expensive suits instituted under personal liberty laws, habeas corpuses, and other machinery of that kind. Let us do them justice in this respect. Let us fairly comply with our constitutional duties, and treat the South like brethren, not like enemies. It is all they ask us to do. That is, that it is all that the great majority ask us to do.

In the next place, they ask us to secure to them a fair proportion of the public domain, to which they may emigrate with the same freedom from molestation which we enjoy in emigrating to the Northwestern lands. This is also just. The public lands are the property of the whole nation. It is not fair in us to grasp them all. They would be satisfied with the line of thirty-six degrees and thirty minutes as a line of division. New Mexico and Arizona are the only Territories south of that line. It was the line with which the nation was satisfied for a generation. Why not re-adopt it?

But that would be against the principles of our party! Is fealty to party to stand before fealty to the country? Is a divided country, torn by civil dissensions, to be preferred (for it certainly will come) to a generous concession of some rigid party dogma? Then I am no party man. Then I repudiate party.

But it is not so. The Republican party can re-establish the Missouri line with perfect honor—and without the sacrifice of a principle. They would thereby secure to free labor three-fourths of the public territory, all of which, by the highest judicial authority of the nation, is now declared to be open to slavery equally as to free emigration.

Shall we say that the Court decided wrong? That may be. All Courts are liable to error. But peaceful and judicial decision, under a government of law, is far better than an appeal to arms. At all events, such *is* the decision; and the constitutional mode of correcting it is not by disregarding it, but by amending the Constitution upon which the decision was made.

FELLOW REPUBLICANS! the issue is in our hands. Some of our number desire a disruption of the Union

for the very purpose of erecting a Northern Republic. Shall we be led by them into the yawning gulf which lies at our feet? They will counsel us against all concession. I regard them but little better than the rebels of the South. Our ambitious politicians are bent on ruining us. Let the people rise in their might and speak a voice for Union and the country that will make politicians listen and tremble.

They say, "Who's afraid? I will tell you. Fools and madmen are not afraid. But those who foresee the evils that are to come—they are afraid. They fear for their country, and for the fate of civil liberty in the world.

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[Published February 20, 1861.]

## BACKBONE.

Some papers and speakers are constantly talking of *backbone*. "Don't back down from your principles," is their motto. It is well to understand what this means.

There are three distinct parties at the North: First—*Democratic politicians*, who seek every opportunity to turn the public crisis to their particular party advantage, by representing that the Republican party is an association of enemies to the Constitution and country. Their constant effort is to place the Republicans in the wrong. They profess to be friends of Southern rights, and eagerly put forward such plans of compromise and conciliation as they *know* will be distasteful and revolting to the Republican feeling. They do this in order to drive the Republicans to the position of enemies to all compromise.

Second—*Republican politicians*, some of whom appear to think more of a Chicago platform than they do of the Bible—or, at least, *profess* to do so. They care fifty times as much for their party and its programme as they do for the country. When urged to concur in a compromise with the Border Slave States, one of this class said, "No compromise. If they choose to go, let them go. We can get along without them. We can form a confederacy with Canada and establish a great Northern Republic." Publicly, of course, they profess great attachment to the Constitution; and assume to be its friends *par excellence*, while they refuse to lift a finger to save it, except in the impracticable way of coercion and civil war. Just at this time they are the advocates of warlike preparation, strengthening the hands of government, and all that; and they decry every one who speaks of concession and arrangement as a traitor. They call him weak-kneed and dough-faced. They step before the real lovers of the Constitution and the Union, push them one side, and cry out, "We are the true patriots; we are the true lovers of the Constitution."

Third—The other party are the moderate and considerate men of all parties who love the Constitution and the Union more than they love party; who cling to them as the palladia of all they hold sacred and dear. To save them from destruction they are willing to concede every just right to the slave States. They are anxious to make some arrangement which will confirm the Union sentiment in the border slave States. They are just as strong in favor of supporting the government, and giving it power and efficiency, as the sternest Republicans; but they are, at the same time, equally

as anxious that all occasion for testing the strength of government may be obviated by paternal and peaceful arrangement. They are anxious for this, because they believe it to be the only practicable method of preserving the national existence. They are the people whom the politicians call weak in the knees, destitute of backbone, and such like liberal epithets.

IS NOT THIS EXACTLY TRUE? Now, which of these parties are we to choose? Are we to stand by and see the country go to pieces, and not lift a hand to prevent it? *The border slave States will certainly join the Southern Confederacy unless something be done to confirm the Union sentiment, which, at the present moment is in the ascendant there.* But though now in the ascendant, the doctrines of secession are constantly preached by a thousand interested missionaries from the Gulf States, and will assuredly prevail, unless we enter into some arrangement which shall demonstrate our willingness to yield the South a fair participation of the public territory. It is not enough for us to say that we intend no invasion of the rights of the South. *They think otherwise.* They interpret the Republican platform otherwise. True, the most moderate men of the South might and would be satisfied with things as they are; but the masses will not be, and the question is simply this: *Shall we divide the territory, or shall we divide the country?*

Another proposition is equally clear: If the border slave States do join the Southern Confederacy, coercion is out of the question. We are then a broken and divided empire. Our glory and our greatness are extinct.

It is also clear that nothing is necessary to be done which the North cannot honorably agree to. What

concession of principle is involved in adopting the line of thirty-six degrees and thirty minutes as a perpetual line between slave labor and free? *The Chicago platform?* Does that platform mean to declare that the Southern States are entitled to none of the territories? If it does, it declares a solecism. Whatever its terms may be, its spirit is only defensive—not aggressive.

Slavery was marching northward, striding over Kansas and the West. The Supreme Court declared it lawful everywhere in the public territories. The Republican party raised its protest against this advance of the slave power. This is simply its position. Its language may be strong; but the spirit and meaning of it was simply this—"*thus far shalt thou go, and no farther.*" Now an *agreement* or *compromise*, which ends the strife, and drives the stake, and lays the line of demarcation forever, is not concession of principle, nor a compromise of honor, but a fair adjustment of conflicting claims.

Then which of the parties are we to choose, the politicians or the peacemakers? As for me and my house, our faces are set for conciliation and compromise.

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Speech at Newark on the celebration of Washington's Birthday, the evening of February 22, 1861.

Joseph P. Bradley Esq., was then announced, and spoke substantially as follows:

*Friends and Fellow-Citizens:*—I understand this meeting was intended to be free from a partisan character. As such it was represented to me, and as such I complied with the request to offer some remarks in

your presence. This is no time for the indulgence of party feelings, or the promotion of party objects. A common danger, which threatens our country, renders it necessary that those should be discarded—a danger such as has not been faced since the times of the Revolution, and those which immediately followed it.

I know it is very hard to rise above the influences of party prejudice. Often it almost drowns the sentiment of patriotism. Party rancor and party hatred are the last serpents which the genius of patriotism can crush. But in all great emergencies like that in which we now are, crushed they must be, or else we shall drift on to certain and irretrievable ruin. [Prolonged applause.]

The celebration of this day is a fitting occasion to call these sentiments to mind. No man ever lived who rose so far above the paltry prejudices of the hour and of the partisan as George Washington. His motto was his country only. We have just heard the preceding speaker read the solemn words of warning which he addressed to his countrymen when retiring from public life. They sound almost like a dirge on the ear—or like the burden of some ancient prophet—foreshadowing the dark days of evil for time which are to afflict a guilty and infatuated people.

In turning back to those passages in his history which seem most fitting for our present contemplation, none have struck me more forcibly than those which preceded the adoption of the Constitution. The Revolution had triumphed—victory was won—peace was smiling over the land—and everything betokened the inauguration of a prosperous age; but the demon of anarchy was stalking abroad. When there was no

public enemy without, then the furies of internal dissension seemed to be let loose. There was a confederation of States; but it was not a united government, every State did what was right in its own eyes, furnished the supply which Congress demanded when they chose, and refused them when they chose.

Individuals imitated the examples of the States, and armed themselves in hostility to their own Government. In Massachusetts a very formidable armed insurrection arose in the western counties. The Courts were forcibly closed and not allowed to assemble, and general gloom prevailed. The Government was crumbling into atoms, dissensions and chaos were the order of the day.

This was in 1786. Washington was fifty-four years of age. It is interesting to us to know how he thought, and how he acted, at such a time as this. It seemed as though all for which he and his compeers had toiled through the dark and dreary days of the Revolution was in peril of imminent and inglorious destruction. It seems so now. How Washington felt, and how he acted then, present a lesson well worthy of the deepest reflection.

I have before me several of his letters written during this period, and whilst the Constitution was under discussion, which shows to us my *beau ideal* of a true patriot—that is, *a patriot above the spirit of party.*

[Mr. Bradley here read extracts from letters written by Washington to Jay, Madison and Lafayette.]

These are the sentiments on which our national existence rested for seventy-five years, and with which every American citizen should at this moment be actuated. The anxieties, the impulses, the heart-

throbbing yearnings for the good of the whole country, and the union of the whole country, on principles of justice and mutual sacrifice, are needed now no less than they were needed then. These were the feelings that glowed in the bosom of the Father of his Country, and if he were alive they would glow in his bosom now. [Applause.]

The union of the country, and the Constitution which was found to preserve and support it, and a spirit of mutual concession and sacrifice both emanating from and sanctified by the spirit of lofty patriotism, untainted by party feeling, party animosity or party prides—these are the objects for which he labored; this is the spirit by which he was animated—and he preaches them to us this day, in a voice of touching entreaty, coming down from the echoes of the past, in tones so eloquent that none but traitors can refuse to hear. [Tumultuous applause.] Ah! ye that spurn the institutions which he helped to frame, and over the inauguration of which he presided, and strive to tear asunder with unhallowed hands the glorious flag which he unfurled—ye that spurn the holy love of country, those patriotic feelings of mutual forbearance, concession and sacrifice, which animated him and his compeers, and which he endeavored to impress upon the hearts of his countrymen—ye that cling to local and party prejudices in a time of general danger and prevailing treason, and forget that you have a common interest in the welfare of the whole country, and of every part of it—I charge you never to invoke the great name of Washington as a patron of your principles or your deeds. Could his pure and majestic spirit look down

upon you from the place of his serene abode, his grave and indignant form would chill your miserable hearts to stone. [Great applause.]

But, my friends, let us look for better things to come, and that we may yet see the glorious institutions that have promoted the interests of freedom throughout the world, shall be preserved by mutual conciliation and sacrifice.

Mr. Bradley resumed his seat amid loud applause.

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It thus appears that as long as there remained the slightest hope of reconciliation and compromise with the South, Mr. Bradley was among the most earnest in favor of it, and was ready to make any honorable concession to accomplish it. But the moment the flame of rebellion burst out into open violence, his whole tone was changed. In his view, it then became simply a question of country or no country; a question whether we would stand by our free institutions till the last drop of blood was shed, or whether we should tamely submit to have them destroyed by wicked hands before our eyes. And as in a foreign war it is our duty as well as a point of honor to stand by our own Government even though some of its measures may not be approved; so, in this war, it is our duty to stand by our Government in its efforts to put down treason and rebellion. These views will be found expressed in the following articles. The first appeared as a communication in the *Advertiser* on the 15th of April, 1861, a few days after the attack on Fort Sumter and the troubles at Baltimore:

## THE CRISIS AND ITS DUTIES.

[Published April 15, 1861.]

There can be no question or vacillation now. EVERY CITIZEN IS BOUND TO SUSTAIN HIS GOVERNMENT. When questions of policy were discussing we might differ. We may privately differ from Government as to its policy now. But Government has declared its policy, has taken the responsibility of action, and now, we must either stand by our country, or be prepared to fall in its ruins.

We had hoped this painful crisis might have been avoided. We believe it could have been avoided. We labored hard to effect that result. But it was not effected, and civil war is upon us, and it is no time now to indulge in useless regrets. The proper parties will be held responsible at a proper time.

It is now no longer a party question. It is not a Republican question, nor a Democratic one. It is a question of government, and law, and country. When our country, as represented by the constituted authorities of government, calls to duty, either in a contest of self-preservation or against a foreign foe, it is no time to inquire who are in power, or by what party the Government is administered. To do so, might show a loyalty to party organization, but it would be practical treason. We need not yield our opinions; we need not cease to urge our views in our domestic councils; nor to influence, so far as we may, the views of our own public agents and rulers, but to those with whom our country is at issue, we must show a united front. We must reserve to ourselves the sole right of abusing our rulers. But since they

are *our* agents, and the representatives of *our* sovereignty, others must respect them. We may scold, but we must obey. We may grumble, but we must fight; fight under and fight for our flag, no matter by whom the staff is upheld.

*But in the light of the* CONSTITUTION *and the* LAWS, *our government is right.* Secession has always been treason. Those who are familiar with its history know that the people of this country adopted the Constitution *for the very purpose* of putting an end to nullification and secession. Its very preamble declares its object to be to form a more perfect Union, and to insure domestic tranquillity. It expressly declares that no State shall enter into any treaty, alliance or confederation, nor, without the consent of Congress, keep troops or ships of war in time of peace, nor enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded; and, for the settlement of differences that may arise, the judicial power of the Government is extended to controversies between two or more States; and the Constitution and the United States are declared to be the supreme law of the land.

The moment South Carolina interfered with the execution of the Federal laws, the moment she laid the weight of her finger on a foot or a pound of Government property, with intent to occupy and keep the same by public force, that moment treason was committed; and as, by the same Constitution, the President is to "take care that the laws be faithfully executed," that moment it was his constitutional duty to employ the executive force of the country to execute the laws. The *constitutionality* of the course now taken by Government cannot be called in question.

We never urged compromise on the ground that secession was constitutional, or that it was to be viewed with a moment's patience; but only on the ground of expediency—as the best way of restoring harmony and peace to the country. We still believe that it would have been wisest and best. Our own view always was, conciliation first—nay, conciliation to the extreme point of liberality—and *then*, if nothing would avail for the attainment of peace and submission to the common Government of the country, *then*, and *not till then*, let *force* decide whether we have a country or not. But that is also past.

*Now the Government has put forth the arm of its power to execute the laws, and let them be obeyed.* Let there be no traitors; no double-minded among us. Let there not even be any vacillating. If any treason is found to exist among us, let it be crushed in the bud. Let us do all that in us lies to support the dignity and glory of the country which gave us birth. Let not New Jersey be backward. She has never been backward in duty before; let her be true to her old traditions now. We hope the Executive of this State will take all such measures as are in its power to be ready at a moment's warning to aid the common force, and to preserve the domestic tranquillity of the State.

But how far, it may be asked, are we to support the acts of Government? So far, most assuredly, we answer, as Government shall see fit to go within the line of its constitutional power; and that clearly extends to the possession and occupation of all the Government forts and arsenals and post offices, and other public property, and the execution of the federal

laws in all the States. Whether Government will consider it expedient to go so far as that is for *it* to determine. The Congress has been called, and if the national will, expressed in a legitimate manner, shall deem it advisable, *on just terms*, to allow a portion of the United States to separate itself from the mother country, and erect an independent government, it will then be time enough to call in question the attempt of the Executive to maintain the national authority in the whole country. Meanwhile it will be our right and our duty to contribute our mite toward influencing that national will in such direction as each of us, having the good of his country sincerely at heart, may deem most for the public welfare.

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On the 22d of April, 1861, a mass meeting was held at Newark to take into consideration the public crisis and to devise measures for aiding the Government in the suppression of the rebellion. Mr. Bradley was requested to draw the resolutions for this meeting, which he did, and enforced them by a speech, which was not reported. The resolutions are as follows:

RESOLUTIONS.

WHEREAS, the subversion of our country's Constitution and Government is threatened by armed bands of traitors in several States of this Union, and the Federal authorities have found it necessary to call into action the military force of the country for the maintenance of the laws; and WHEREAS, the preservation of our national existence requires the co-operation of every loyal American citizen at this crisis of our history, therefore,

*Resolved*, That it is the firm, unanimous, unalterable determination of the citizens of Newark, first of all, and above all other duties, laying

aside all party distinctions and associations, to sustain the Government under which they live, which was adopted by the people's own choice, and which has never brought anything but blessings in its train, and to this object they pledge their lives and property.

*Resolved*, That we, the said citizens of Newark, will give our united, strong and unwavering support to the President of the United States and the General Government in its endeavor to enforce the laws, preserve the common property, vindicate the dignity of the Government, and crush the treasonable conspiracies and insurrections which are rampant in various parts of the land, leaving to them, as the constituted authorities, the exercise of their rightful discretion, within all Constitutional limits, as to the mode and manner in which it is to be done; at the same time sincerely deploring the necessity which compels us to array ourselves in opposition to men of the same blood, and who possess, in common with us, the traditions of the Revolution, solemnly declaring that nothing but the highest and most sacred sense of duty to our country and our God could lead us to risk the shedding of our brothers' blood.

*Resolved*, That we utterly execrate and abhor the ringleaders in this treason and rebellion, as enemies of all good; as false to their country, their oaths, and their honor; and that they have forfeited all claim to our fraternal sympathies and regards; but we sincerely commiserate and sympathize with our fellow-citizens in those States where rebellion is predominant, who still maintain their loyalty to the Constitution and country, but who are unable, in the insane and treasonable commotions which surround them, to make their voices heard.

*Resolved*, That by the Constitution we are one nation, indissoluble by the action of any State or section; that the Constitution and the laws provide the means of redress for every wrong, actual, fancied or apprehensible; and that, when peace and obedience to law are restored, we shall be ready to co-operate with our fellow-citizens everywhere, in Congress or convention, for the relief of all supposed grievances, yielding ourselves, and expecting others to yield, to the will of the whole people lawfully expressed.

*Resolved*, That the Common Council be respectfully requested to make such appropriations as may be necessary for the support of the families of those of our citizens who shall enter into military service under the call of the constituted authorities, and we pledge them the unanimous support of the people in so doing.

*Resolved*, That a committee of twenty-five citizens be appointed by the chairman to take in charge and carry forward all measures

needful for the equipment of troops, and to co-operate with the Common Council in the objects of the last resolution, and to take such measures in co-operating with the authorities for the general security and protection as may be deemed advisable.

The only other document we shall reproduce comprises the resolutions adopted by the great Union meeting at Newark, which was addressed by Hon. Daniel S. Dickinson, September 20, 1861, together with the speech by which Mr. Bradley introduced them. These resolutions were also from Mr. Bradley's pen, and express the position which he has always assumed since the Rebellion broke out:

### MR. BRADLEY'S SPEECH.

Joseph P. Bradley, Esq., was then introduced by the chairman, and was most warmly received. He said:

*Friends and Fellow-Citizens*:—It is made my duty by the arrangements which have been made by those who have called this meeting together, to present for its consideration resolutions expressive of their views in respect to the great and important events which are hovering over our country. [Cheers.] Before reading these resolutions, I will take the liberty to express in a few and plain words the general purport and essence of the resolutions that will be offered. In the first place, we believe that this Union and this Government of ours, under which we live, under which we have so long been happy and prosperous, under which more freedom, more liberty and more enjoyment is experienced than under any other government that has ever existed on the face of the globe, is and must, and shall be maintained [cheers], and that it ought to be so; that it was meant to be so, and that to maintain

the contrary was treason to the principles upon which the Government and our institutions are founded. [Enthusiastic cheers.] In the next place, we believe, and we hold it to be true, that the Constitution under which we live, was adopted by the people of this country for the purpose of preserving and defending that Union and Government, and that those who attempt to subvert it, and to rend this fair country into divided fragments are traitors to the principles of the institutions that adorn the American world. [Cheers. A voice: "That's so."]

In the third place, we believe, and hold it to be true, that at such a time as this, when treason and rebellion are stalking about in the land, and are not absent even from ourselves, we should forget all party differences and bury them under our feet, and come up Democrats, Republicans, Americans or whatever other party there may be, shoulder to shoulder, as we stand here to-day, in support of the Constitution and Government, until its authority is vindicated forever. [Loud cheers.] In the fourth place, that we will, because we must, trust the management of the controversy to the constituted authorities, whoever they may be, forgetting for the moment all other political objects. We shall stand by them, not because they are of this political shade or of that, but, because in the providence of God they happen to be at the head of our affairs, and if we do not support them we cannot support our leaders. [Cheers.]

In the fifth place, we believe that we ought to unite and organize ourselves together as a Country party [cheers], as a Union party [cheers], and as a

party determined to see the Government through [cheers]; that we will stand by the Constitution which is the Constitution of thirty-three States, and not of seventeen States, and that we will do this without any fear of danger or hope of reward. [Cheers.] That we will do it because it is our duty to do it; because our prosperity depends upon it; and that we will do it because we have sworn allegiance to this Constitution and this Government. After alluding to the peace party, and remarking that we should have submission to the Constitution first and compromise afterward [cheers], Mr. Bradley read the resolutions, as follows:

RESOLUTIONS.

1. *Resolved*, That "the Union must and shall be preserved;" that its preservation is demanded by the history of the past and the hopes of the future; by the wisdom of its founders and the national happiness and prosperity which it has caused; by a regard to the sanctity of law, and the success of free institutions; as an example to the world, and a guaranty to future ages, of the ultimate triumph of right, liberty and equality.

2. *Resolved*, That the Constitution of the United States is the palladium of the Union, and was adopted by our fathers for the express purpose of rendering it perpetual; that to it, as the supreme law of the land, we owe our first and highest allegiance, paramount to all other allegiance; and that none but traitors and parricides will attempt to subvert it or to desecrate the flag which waves over us as its expressive symbol.

3. *Resolved*, That in the present contest for the existence of the Union, we should recognize no party, believing it to be the solemn duty of every patriot to lay aside party names and party prejudices, and rally to the support of the Government until rebellion shall be crushed and treason annihilated; and that the nomination of candidates for any office on party grounds tends to excite a strife which cannot fail to be productive of evil in the present unhappy condition of the country.

4. *Resolved*, That when our Government shall be rescued from danger of annihilation, and we can once more say we have country and a name to be proud of; when it shall again be a boast and a shield of safety all over the world to say, "I am an American citizen;"—it will then be time enough to remember our party names, and to discuss party issues; but till then to do so will be to fight against our brethren, whilst the enemy is destroying our common heritage.

5. *Resolved*, That as long as two hundred thousand rebels are thundering at the gates of the Capital, none but those who are cravens or false-hearted will cry "peace, peace;" and none but traitors will seek to restrain our strong-handed yeomanry from rushing to the defence of our common country and Government.

6. *Resolved*, That in the exercise of the war power, and in the midst of actual hostilities, it is no time to trifle with or wink at treason, either active or covert; and if any persons are found within our lines whose loyalty is reasonably suspected, the only safe course is to deprive them of the power to do mischief; and that in arresting and securing those who aid and abet the cause of our enemies and suppressing seditious and treasonable publications, the Government exercises only the ordinary right of self-preservation, and the power which is implied in the right to resist and suppress an internal war.

7. *Resolved*, That all Union-loving men who feel that party should be ignored and that our Government should be sustained and upheld in its endeavors to put down rebellion and enforce obedience to the Constitution and laws throughout the whole country, and who are willing to act on these views, should organize themselves for promoting and carrying out such a sacred object and for thwarting and overruling the insidious acts of those who profess a desire for honorable peace, but are ready for a dishonorable surrender of the integrity of their country.

8. *Resolved*, That a committee, to consist of seven members, be appointed by this meeting, to inaugurate such an organization for this county, and to correspond with similar committees from other counties, in order to perfect such an organization throughout the State, so as to give to the loyal people of New Jersey an opportunity of making their voice heard, and their influence felt, in the pending struggle for a national victory.

The resolutions were adopted by acclamation.

It thus appears that Mr. Bradley has always been eminently conservative in his views on national questions. It also appears that on the subject of the Rebellion he has never entertained but a single view—that it must be put down at all hazards, and that no more compromises can be entertained till the authority of the Government over the whole country is restored. This is the sum and substance of the whole record; and shows that Mr. Bradley stands where every true patriot stands—on the Constitution as it is, and the Union as it was.

# SPEECH

OF

# JOSEPH P. BRADLEY, Esq.,

AT THE

## UNION ADMINISTRATION MEETING,

HELD IN NEWARK, OCTOBER 22, 1862.

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[From the *Newark Daily Advertiser*, October 23, 1862.]

### THE ADMINISTRATION MEETING.

SPEECHES BY MESSRS. BRADLEY AND OTHERS.

The mass meeting of friends of the Administration, held at Concert Hall last Wednesday, was another impressive demonstration of popular sentiment, the spacious hall being filled to overflowing at an early hour; and the remarks of the speakers were listened to with deep interest. The main feature of the evening was, of course, the speech of Joseph P. Bradley, Esq., their candidate for Congress in this district, it being the first public expression of his sentiments since his nomination. Though fresh from the court room, overwhelmed by professional cares, and somewhat embarrassed by a cold, Mr. Bradley warmed up with the interest of his subject, and it is not too much to say that he more than realized the most favorable anticipations of his friends. His speech, to a full report of which we yield a large portion of our space, which could not be better filled, was the fresh and vigorous utterance of one whose thoughts are not

accustomed to travel in the settled groove of partisan machinery, or among the cunning platitudes of the mere politician—but the enlarged views of a thoughtful and intelligent man, who has been drawn into the political arena solely through a sense of duty to the country; and he doubtless did not exaggerate the truth when he said that, on personal accounts—and all others, save the great principles at stake—he should greatly prefer the election of the opposing candidate to his own. But without enlarging upon the details, we give place to our report:

### MR. BRADLEY'S SPEECH.

The chairman then introduced Joseph P. Bradley, Esq., who spoke as follows:

*Mr. Chairman and Fellow-Citizens:*—I do not know that I am well enough to-night to say more than a few words. I am oppressed by a severe cold in my throat and chest; but I have nevertheless felt it my duty, as I have been expected here, to make my appearance and to declare myself upon some of the issues presented in the present canvass.

I appear before you in a position in which I never expected to be placed. Political distinction was never an object of my ambition, especially political distinction of the sort for which I am now a candidate before my fellow-citizens of this district; and I could not have been persuaded to engage in this contest but from a sense of duty. I look upon this election as the most important one that has ever been held within my recollection. I believe that it is the most important election that has ever been held within the memory of

any man in this house. I believe that the general results of the election in the Northern States will go far towards settling and determining the destiny of this great republic; and I believe this because I believe that if the Democratic party shall be successful in the election of its candidates in the Northern States, or in the election of a majority of them, so as to control the next Congress of the United States, the republic is ended. This may be a hard saying. I would not say it without due deliberation; and when I do say it, I do not mean to be understood as saying that there are not in the ranks of the Democratic party many thousands of excellent and patriotic men; but I do mean to say that the secret councils of that party at this time are controlled by men—*deep* men—who have not the interest of their country at heart. I believe that those men are deceiving the people who follow them—for the people are honest—the masses are honest—but they may be temporarily deceived by false pretenses; and such I believe to be the fact under the present organization and operations of the Democratic party.

We cannot shut our eyes to the fact there are now two classes of Democrats; and I may as well use here on the platform the words we use on the street, and say that those two classes are the Secession Democrats and the War Democrats, respectively. [Applause.] We know that there are these distinct classes in that party, and we know further that those who are popularly called Secession Democrats are the leaders of that party—the leaders who meet at Trenton, fifteen and twenty of them at a time, and consult about the interests and plans of the party; who direct all its

councils and manage all its affairs, and through whose dictation it is that such men as George T. Cobb, of Morristown, are thrown overboard, and such men as Andrew Jackson Rodgers are nominated for Congress. I believe, therefore, that that party, if it comes into power, instead of wielding the resources of the country energetically for the restoration of the Constitution and the laws, will, to say the least, be pervaded by divided councils; and, to say all that I think and believe, it will be governed by counsels inimical to the stability of the republic, its honor and its life. For this reason I have felt, and do feel, this to be the most important canvass that has taken place within my memory, and for this reason also I feel it my duty to contribute, if I can, something toward the success of the Administration party, whose object, as I understand it, is, first of all, the restoration of the authority of the Constitution throughout the whole country. [Applause.] If this is not the object—the great object—of that party, then I am not a member of it. [Renewed applause.] I look upon this idea as the one that swallows up all the rest. There are minor issues, it is true; but they sink into insignificance when compared with the one great issue of saving our country from destruction, and from division, which *is* destruction. Therefore it is that I am here, and that I have consented to appear before you in this political contest as a candidate for your suffrages. I have not sought this position; I do not desire it; and were it not for the *principles* that are involved in the issue I would gladly see my opponent elected instead of myself. [Applause.]

I am not able, as I said before, to speak long

to night; and my words must be few and pointed. I have already indicated what I consider to be the great cardinal principle of the Administration party, namely, that "The Union must and shall be preserved." [Prolonged cheering.] In whatever way that can be done, and be done most effectually, so let it be done. I know of no conditions under which our exertions for the accomplishment of this great object are to be placed. I know of no limits by which they are to be restrained, other than the laws of God and the law of nations. These we must observe. Our Constitution gives us the broadest scope in which to work; and I will observe here, that it is puerile to say that this or that thing in the conduct of the war is "unconstitutional." I say that such an assertion is incorrect, illogical, and a solecism. Does not the Constitution contain the war-power just as much as it contains the *habeas corpus*? Does it not contain provision for a power on the part of the Government to suppress insurrection and rebellion? When those powers are given, all the powers that we want are given—all the powers we can exercise or that can be exercised within the limits that I have named—the laws of God and the law of nations. [Applause.] It is idle and worse than idle to say that the Constitution has been violated or broken in the conduct of this war. There has been no such violation; but they violate the Constitution who stand up and do nothing when the Constitution is threatened with destruction. [Renewed applause.]

I am not going to read to this audience—it is not necessary that I should—a legal opinion upon what the law of nations will permit and what it will not permit. I take for granted that the admin-

istration, having learned counsel around it, is advised upon the subject; and I am willing, so long as President Lincoln is at the head of affairs, to confide to him, and to such councillors as he calls to his aid, the selection of measures whereby to perform this great duty of the Government, namely, to restore its authority and that of the Constitution, and to save the country from ruin. Had I been President, I might have done some things differently; I do not say whether I would or would not; but this is not the question. When my captain tells me: "Forward, march! the enemy is before you;" I must not stand, look behind me, and say, "Captain, it is not time." I tell you that all subordinate questions are swallowed up in the one great and overwhelming question of self-preservation, and they are quibblers who say that what is done to effect that end is "unconstitutional." [Prolonged applause.]

Having said so much, what more need I say? There is the whole thing before you. Most of you here know me. You know that I never was an abolitionist. [Laughter.] You know that I was always a conservative of the conservatives. The last time—indeed, the only time—I ever spoke in this hall, was on the evening of the 22d of February, 1861, just before President Lincoln arrived at Washington; and some of you may remember what a doleful speech I made on that occasion. [Laughter.] I remember it. I made it from my heart. Nothing but compromise would suit me at that time. I was for compromise to the last—for 36:30 through to California—[laughter]—for anything in God's name rather than blood or division. But the moment they began to throw mud at the glorious old flag, fired on Fort

Sumter and levied war, then we were *in* [laughter and cheers]; and then came up in me, as it came up at the same time in millions at the North of every shade of opinion before that, a sentiment of devotion to the Constitution and to the integrity of the republic—the whole republic—first of all and before all. Then we heard and thought and felt no more on the subject of compromises. The day of compromise was ended; it was then the day of *fight*. [Applause.] "Not that we loved Cæsar less, but that we loved Rome more"; not that we felt any the less disposed to do justice to the Southern States or people, but that we felt that we must above all do justice to ourselves and our country. [Prolonged applause.]

How we have been and are misunderstood and misrepresented! Because we love our country more than all things else, and therefore have discarded the idea of compromise when compromise is no longer practicable, and when there is no longer any use in raising that cry, we are called abolitionists. [Laughter.] Is this fair? *I* do not want any better Constitution than the old one. I want to see that Constitution stand just as it is, word for word and letter for letter, as long as I live. I do not want it altered; I do not want it violated; I do not want to see the relation of the States to each other, nor the relation of the people of the different States, altered in the slightest degree. I would have all these remain as they were; but in prosecuting this war for the preservation of the Union, I would prosecute it as I would prosecute any war, by taking the ships of the enemy, if necessary, without compensation; by taking the horses of the enemy without compensation; yea, by taking their lives without compensation. [Applause.]

If any person cannot hold in his head these two ideas, it must be either because he shuts his eyes and ears to them, or because he is so low in the scale of intellectual existence that he cannot receive and understand two ideas at once. They say on the other side, "The Constitution as it is and the Union as it was"; and so do I. [Applause.]

I say it just as strongly as they do; but at the same time I say, "Boys, load your guns; take aim; fire!" [Applause.]

And I say it because that is not a violation of the Constitution. The suppression of rebellion by whatever means the law of nations allows, is permitted to every Government in the world; it is permitted to our Government; and the idea sought to be foisted upon the people of the North, that we violate the Constitution when we do this or do that to quell the rebellion, is the secret whisper of the enemy—I mean the old enemy—the Arch Enemy. [Laughter.]

These are general principles, and they are principles by which we can stand now and at all times with perfect security. No one can assail us on such a platform as this; it is the platform of the Constitution, and upon that I stand and mean to stand whether elected or not. [Applause.]

One word more regarding the merits of the question. Not only are these our principles—that the Union must and shall be preserved; and that what is done for its preservation is well done—but they are vital, *vital*, VITAL! If we do not carry them out we are undone. Not only are they *our* principles, but they are the *only* principles that can save us from perdition. Some good men, especially among the Seces-

sion Democrats, say, "Let them go; divide the country; it is large enough for two republics." Ah, my fellow-citizens, if we once admit that doctrine of dividing the country, in the first place where will you draw your line? Through the Potomac? Along Mason and Dixon's line? On the south side of Virginia, or where? In the next place, after you have drawn it, how long will it stay drawn? [A voice, "That's it."] And in the third place, after you have made one division, how long will it be before another and another will follow? No, my fellow-citizens, we must stand by this Constitution and Union as the ark of republican institutions and of civil freedom throughout the world. [Applause.]

In other countries they entertain a principle of loyalty to their sovereigns. In this country, our loyalty has all been directed to the Constitution made by our fathers, by mutual concessions and mutual sacrifices—the best Constitution in the world. Loyalty to the Constitution of their country is the only loyalty Americans know. Divide the republic, and this loyalty that has grown up in our bosoms from infancy is gone; and there is no man here who, if the republic was divided, would not go about the streets in mourning; for the great bulwark of republicanism in the world will have proved a failure. Foreign nations would point at us as the great example of the failure of free institutions; and Americans going abroad, instead of being respected, would be pointed at and despised. If our country were to be divided and our Constitution and institutions to fail, I would not travel in Europe any more than I would travel in the realms of darkness. [Applause.] I would not show

my head there; I would be ashamed to do so; and I would not allow an Englishman or a Frenchman to enter my house. [Laughter and applause.] I tell you, my friends, that if we give up this heritage of ours we give up the most precious thing that has ever been planted by human hands upon this globe. Shall we give it up? [No! No!] Shall we give it up to those Southern traitors—aristocrats who have no love for free institutions, and who are determined that if they cannot rule they will ruin? Let us drive them into the sea. Let us re-establish the authority of the Constitution all over the land. Let us do it, even if it involve the sacrifice of the population of one-third of the States. If they will not yield to the Constitution and laws without being sacrificed, let them be sacrificed. I tell you that our free institutions are worth more than that sacrifice. Let these institutions be transmitted by us to our posterity with all the living vigor with which we received them from our fathers. [Applause.] There can be no compromise about that, gentlemen. I do not say this because I hate the Southern people or their institutions. I do not care a straw about their institutions, comparatively. That is not the question; it is, "Shall they be permitted to destroy our Government?" [No! No!]

Now, there are some minor questions that our opponents have talked a great deal about—the *habeas corpus*, the act of confiscation passed by Congress, and the President's proclamation of emancipation. I have opinions upon all these subjects, and I would be very free to express them if I were able. I really am not able now; but I may have an opportunity of meeting you upon some other occasion during this canvas, and

of saying what I have to say upon these matters. But after all is said that can be said, what miserable issues are they, each and all, compared with the great issues I have spoken of.

Oh, gentlemen, these men would not talk so much about the *habeas corpus*, and the President's proclamation, if there was not something rotten in their bones. [Applause.] I believe in the *habeas corpus*, and I do not know whether or not I would have issued the emancipation proclamation had I been President; but the President must know a great deal better than I do the reasons for it, and I am willing to take for granted that he does. At any rate I am not going to quarrel with him about it just now. I am going to stand by him until this war is over; and if it be not over when he goes out of office and another man is put in his place, I do not care to what party he belongs, if he is only loyal to the country and the Constitution, I will stand by him too. [Applause.]

I know that in our particular community there are many respectable men—men who formerly belonged, many of them, to the old Whig party, God bless it! [Cheers]—conservative, good men, who think that by making a peace with the South and letting them go, trade will revive and things will go on better. Now I have respect for these men. I know that they are in a false position—that they are influenced in a great degree by their pecuniary interests. Men cannot help this; and we are bound to have charity for them. I respect these men, for they have been at the very bottom of the prosperity of this city; but their principles I do not agree with; and if there are any of those gentlemen here now let me say to them that they are

mistaken. No such peace with the South will ever bring back the business that has been lost. If it is ever brought back, it will be by the authority of and under the old Constitution and the old flag. [Great applause.] Let me tell you that the South is dealing with the English manufacturers and French manufacturers, and they will whistle at our Newark manufacturers under any peace we may make with them.

Let me say, too, that the prosperity of Newark is not bound up in any compromise with the Southern States or in any unholy peace with them, which may involve a division of the country, but in the cause of the old Constitution and the old flag. Let us re-establish their authority, and we re-establish the prosperity of Newark, of its manufactures and its manufacturers. [Loud applause.]

I make these remarks in all kindness to those men; for I believe them to be honestly mistaken; but the mistake is made in such a grave matter that I am sorry that they make it—sorry for them and for the city in which they live.

In order to be accurate with regard to the views I hold in reference to the present contest, I cannot do better than refer to the resolutions passed by the Convention from which I received the nomination. I looked at these resolutions to see what the sentiments of the Administration party there assembled were; and I will now read one or two of them:

*Resolved*, That the friends of the National Administration in New Jersey desire, first of all, a republican form of government—free, great and strong; [None of your petty little republics that command no respect in the world; but a republic, free, great and strong, recommending free institutions throughout the earth by its power as well as its freedom], securing to its citizens the blessings of peace, and challenging the respect of the world.

Mr. Bradley continued reading the resolutions, which were published at the time, commenting on them seriatim and fully endorsing their spirit. He then proceeded to say:

In the spirit of those resolutions I say to the patriotic members of the Democratic party who may hear my voice, "Come, go with us, and it shall do thee good;" for our only object is to restore the country to its normal condition, to restore the authority and majesty of the Constitution and the laws. If this is not the object of the Administration party, then, as I have already said, I am not a member of it. And I also say that those resolutions tell the truth—that in this struggle no man can be neutral; he must be active in favor of the Government and in favor of putting down the rebellion, or he must be opposed to it. Indifference is opposition. Men cannot let their arms hang by their sides and say, "Well, I hope the national arms will succeed in putting down the rebellion; but I have a great many reasons why I do not wish to take any part in this contest." A man who acts thus is like the man in the Scriptures, of whom it is said, "He that is not with me is against me; and he that gathereth not with me scattereth abroad;" for, fellow-citizens, this cause of ours is a holy cause—the cause of civil freedom—the cause of human rights. In saying this, I do not refer to the question of domestic slavery; I am speaking of the great mission of this country. It is a mission of civil freedom and free institutions; and if *it* falls *they* fall. For a succession of ages—long ages—will it and they lie in the dust before a new age shall arise in which freedom can again plant her standards successfully upon the mountains and the plains and the valleys of the earth. [Loud and long continued applause.]

# SPEECH

OF

# JOSEPH P. BRADLEY, Esq.,

THE UNION NOMINEE FOR CONGRESS,

AT

JERSEY CITY, TUESDAY EVENING, OCTOBER 28, 1862.

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*Gentlemen of Hudson County*:—It gives me great pleasure to have the opportunity of addressing you upon the issues of this campaign. I am not known to many of you, personally, and therefore it will, of course, be a satisfaction to you to see me, and hear from me of my views concerning some of the great issues of this contest. All of you know that I was not eager for the position in which my nomination has placed me. I acceded to it with reluctance, and only from a strong sense of duty. I was especially reluctant to be considered a candidate because the nomination, according to usage, belonged to Hudson, and I made it a special condition that I was not to be named as a candidate without the consent of Hudson County. I stood to that condition as a matter of honor between the different parts of the district. The law of honor on such subjects is imperative. It therefore gave me great pleasure to understand that the nomination came from you, and I consider that this fact imposes upon me peculiar obliga-

tions toward Hudson county, and if I should be so fortunate, or unfortunate, as the case may be, as to be elected, I shall feel under special obligations to regard the interests of this part of the district. I hold that any man should be proud to be the representative of this district. There is no district in the country which a man ought to be more proud to represent than the Fifth District of New Jersey. Commerce and manufactures concentre here their most important interests, and the man who faithfully discharges the duties of its representative should be familiar with all the ramifications and wants of those interests, and be able to represent them fully; and properly to discharge that duty, properly to represent the great commercial and manufacturing interests of Jersey City and of Newark, one of the greatest centres of manufacturing industry in the country, I feel requires more ability than I possess, and I shall be obliged to give my sole and undivided attention to my duties, in order to do what will be required of me.

But apart from the local interests of this district, we have at this particular period of our history, issues before the country of great and paramount importance—national issues, than which none more important have been presented to the American people since they have been a nation. None, I say, *more* important.

In the year 1788, an issue was presented *as* important as the present, but never one of greater importance. Then, the question was, shall we adopt the noble Constitution under which we live, which should constitute us one country, one nation, one people, bound up to one destiny? *Now* the question is whether we shall *remain* so.

Two years ago to-day, my fellow-citizens, the sun in his daily round shone on no people so contented, so happy, so prosperous as ourselves. The husbandman tilled his fields on every hillside and tended his flocks and herds in every valley of this broad land, enjoying to the utmost the blessings of a freedom consistent with the good order of society, gathering the full and rich rewards of his honest toil. No poverty cursed the land. Pauperism scarcely existed—we hardly knew what it was. Every man that was able to work and willing to work lived like a prince. Everyone enjoyed the utmost freedom. He felt he belonged to a great and noble country, and he participated in and represented a portion of that greatness and nobility. An American citizen was then respected by all, and he respected himself wherever he went. To-day, if an American should travel in Europe and name himself an American, he would be a jest and a by-word. To-day, instead of being great and happy, and prosperous, we are divided, rent and torn by civil war, and engaged in a terrible struggle to save the nation from destruction, to preserve our institutions, and vindicate the authority of the Constitution and laws.

What would our Government be worth, what would our Constitution be worth, what would we be, what could we do, if we become a divided people? We would be like the petty States of Germany, without power, without resources, without any of those attributes of a nation which command the respect of the world, and entirely at the mercy and control of greater and stronger powers. And who shall draw the line if we divide? What magician with his wand

shall establish a perpetual line of division between one part of the country and the other? Where shall it be? Along the Potomac, south of Virginia, south of North Carolina, Mason and Dixon's line—where? Once admit the *prineiple* of division and how soon will we have to draw the line again? How soon would the West separate from the East, Pennsylvania withdraw from New York, or both from New England? No, gentlemen, admit for a moment this principle, and we have no country at all. The fabric our fathers raised and swore to defend, that moment crumbles into fragments—into petty States, to belong to which would be no honor, and would compel no respect.

New Jersey, noble little State, in whose fame we all feel so just a pride. Who in our own land is not proud to call himself a Jerseyman? Yet who, abroad, would think to call himself simply a Jerseyman? We would call ourselves AMERICANS, and in this name something of the respect would attach to us which formerly attached to the name of Roman citizen. This would be so because the nations have learned to respect our greatness and our power. These constituted us the bulwark of freedom and free institutions in the world. It was this which gave us respect in the eyes of the world. Our ships, our commerce, our citizens, were all honored under the broad shield of our nationality. Take away this, and all power, all respect is gone. We become nothing but petty States, subject to the beck and dictation of every great power in the world. We have all been brought up with a love of our country—brought up to believe that it is the best country in the world. In this country, at least, we thought we saw the true

and final success of republican institutions. This love of country has grown in our bosoms to be a passion. In other lands, there is loyalty to the person of the sovereign; here our loyalty fastens upon the Constitution and the laws, and upon our free institutions. If these are destroyed, this sentiment of loyalty would be crushed, and we should go about the streets in mourning. We should be broken down as a nation, and our great experiment would be a failure. [Applause.] Gentlemen, these sentiments and ideas lie at the bottom of all our principles and instincts as American citizens—members of this great republic. They lie at the bottom of all that we are contending for in this struggle. The man who does not feel these sentiments is a traitor at heart. [Great applause.]

Now, gentlemen, who are the authors of this wicked rebellion which has been excited in the Southern States against this glorious Government? How did it arise? Many say the North are the authors of it. [Mr. Bradley here read an extract from a speech delivered in Newark a short time since before a Democratic convention, in which the speaker justified secession, and affirmed that the nation could never be saved while the present crew are aboard the ship of State, and declaring that they must be got rid of, if the ship had to be scuttled and sunk, and lowered to the deck, and the crew drowned out.] Mr. Bradley then proceeded:

Now, fellow-citizens, I do not justify the intemperate language used by some Northern fanatics. I never did justify it. I have always thought it wrong in principle. I am speaking the sentiments of all conservative men, and I say we were always willing to con-

cede to the South all their just rights—the entire control and regulation of their own affairs. The Constitution gives us no power to meddle with them, no more than it gives them power to meddle with us. The Constitution was founded on the idea that the States should regulate their own affairs.

We have also been always willing to concede to them a fair proportion of the new territory which should be acquired by our common treasure and common arms. And if there were men at the North who disputed these rights, they were few in number, and did not represent the general feelings of the North. No, gentlemen, it was no invasion of Southern rights by the North that produced this wicked rebellion. Never, never. It was the devil in the hearts of the Southern ringleaders—the determination if they could not rule to ruin. That was the cause. The Southern people themselves were not in favor of this rebellion. Two years ago they would have voted down secession if they could have expressed their honest sentiments at the ballot-box. But they were coerced and deceived, and the truth was kept from them until they have become *mad* in this great war against the Constitution and the country—perfectly infuriated. This conspiracy has been ripening for thirty years among Southern politicians. They foresaw that power would depart from their grasp, and they concocted this rebellion. It was Calhoun and his compeers who were at the bottom of it. They are the guilty men whose lives ought to have paid the forfeit. General Jackson—God bless him—ought to have hung Calhoun, and then the seed would have been destroyed which has grown up and ripened to such a fearful harvest.

Now, fellow-citizens, in view of the enormity of this rebellion, in view of this great effort to war against and destroy our Government, what is the duty of the Government—the country—our duty? *To put down the rebellion cost what it may.* [Great Applause.] That's the great principle which animates us to-day. That's the pole star of our political principles. *The rebellion must be put down.* Nothing else must be thought of. I see nothing else, can see nothing else. It glares in my eye continually—the Union must and shall be preserved. [Enthusiastic applause.] You may talk of mistakes, of official acts which are not strictly according to law—about violating this or that clause of the Constitution. It may be so. If so, we can punish them for it after awhile; but for the present, I repeat it, we have nothing to do but to *put down the rebellion*, and hold up the President's hands whilst he is trying to do it. [Applause.]

Fellow-citizens, you want to know what my politics are; there they are. They are not the growth of a day—they have been growing up in me for forty-nine years; they are the outcropping of my whole nature. I have grown up from childhood to love our glorious Constitution and Union, and that love has become a passion of my nature.

I have seen in a speech made not far from this place the sentiment that we must be kind and conciliating to our Southern "brethren"; that we must not deal harshly with them, etc.

Gentlemen, up to the time that the war came, up to the time that the Rebellion became a fact, I could endorse that sentiment with all my heart. I could go with any man or set of men in effecting a com-

promise with the South. I did join, in fact, in December, 1860, in an endeavor to get up a compromise which would have satisfied the Southern people. I spent several weeks in Washington, giving my whole time to this matter, giving all my heart and energies to it, because of my love for the Union, and my hatred of blood. I thought then an honorable compromise could be effected, and I could then say "Southern brethren" with all my heart. But when they became *rebels* and refused compromise and flung conciliation in our face and endeavored to destroy our country, they were my brethren no longer. A rebel, a traitor, is a criminal, like a murderer, an must be put down. If they come in and submit to the authority of the Constitution, I can then again hail them as brothers; but not till then. Until then they are enemies, and to be dealt with as enemies. The plea that we cannot do this or that in a war against them is absurd. We might as well say we could not do such things in a war against England or France. They have repudiated the Constitution, and are we under the same obligations to them that we would be if no war existed?

We are bound by the Constitution assuredly; but the Constitution has in it powers relating to war, and for the suppression of insurrection and rebellion, as well as other powers; and we have the power to take the same steps to put them down as we have to carry on a foreign war, and in the exercise of those powers we are just as much within the Constitution as we are in returning their fugitive slaves in time of peace.

There is nothing in the Constitution which limits or controls the conduct of the war. There is nothing

but the law of nations. And even in regard to that, the law of nations in respect to a foreign war differs from that in regard to a domestic war. We have a right to do things in a domestic war which we would not have in a foreign war. There is not a nation in the world which does not confiscate the property of rebels. It is part of the common law. This right to confiscate extends in this country with regard to lands, only to the lifetime of the guilty person. Therefore, real estate cannot be confiscated beyond the lifetime of the guilty parties. With that restriction, the power to confiscate is absolute, and without that restriction it is absolute in every other country in the world. In a foreign war we should not possess this right. We could not confiscate the property of the citizens of France, as they would owe obedience and allegiance to their own government. But rebels, who fight against their own government, have not that plea. The law of the civilized world says that the property of rebels may be confiscated. So that, while we are bound by the law of nations, it is the law of nations as applied to a *rebellion.*

Now, whether confiscation is or is not expedient, is another question. I only say it is constitutional—*i. e.*, it is not unconstitutional.

It is not for me, gentlemen, to discuss this or that particular measure of the Administration. It is not for me to sit in judgment in matters of such minor importance. If the line of authority has been overstepped we must not stop now to punish the guilty. *Now we must put down the rebellion, and restore the authority of the Constitution and laws.*

Mr. Bradley then referred to the duty of every citizen to support the Government, instancing the example of the Federalists in the war of 1812, who opposed the war violently, and yet for the most part, when the war actually begun, stepped gallantly forward to lend their aid. They went forth like men, and fought side by side with Democrats, and those who then stood back, and let their hands hang idly by their sides, were forever branded as traitors to their country. [A voice, "Buchanan."]

When the country is actually engaged in a war, we must stand by the country. If the Government does wrong, even, I say, stand by it, and see the war through, and attend to the wrong afterwards. That's what we are bound to do now. Party issues are to be discarded. We should discard every issue but one, and that is—our country must be saved and the authority of the Constitution vindicated. Mr. Bradley then referred to the possibility of England and France interfering in this war. If they do, said he, we shall have a more solemn duty than ever before to perform.

The question arises, what will be our duty then? Have we ever injured them, or interfered with them during all their wars? Then what right have they to interfere with us? Neither the laws of God or of nations (except as concocted by themselves), give them any right to interfere, and if they do, it will be because they hate our institutions and will be glad to see their downfall. We are not called upon to declare a policy in advance, yet I, for one, would let those nations know that they can't interfere with us with impunity [great applause]; that there will be

blows to take as well as to give; that there are domestic dissensions and discontent in other countries as well as ours. I would let them know in advance that if they dare stir up the lion in his lair they may feel the weight of his paw. I do not say what policy should be pursued, but I will say that these are my strong convictions. Now, gentlemen, some of these remarks of mine may not be those of a politician. I talk straight out and straight on. You have my views, you have them frankly, fully. Our opponents are full of the wisdom of the serpent, if not the harmlessness of the dove. They profess to be in favor of the war, yet we see in their councils, in their most secret councils, men whom we know, from their antecedents, to be secessionists at heart. What they mean I don't know, but I *do* know that those who are heartily for aiding the Administration in carrying on the war can't be far wrong.

I deprecate party politics in a time like this. I would say to all patriotic men of every party, let us unite in this great and holy cause until peace shall be restored on the only basis on which it can permanently stand—the unity of the whole country under the old Constitution and the old flag. [Loud cheers.]

# THE CONSTITUTIONAL AMENDMENT.

## LETTER

FROM

## JOSEPH P. BRADLEY, Esq.,

OF NEW JERSEY,

TO

## MR. CHARLES KNAP,

ON THE

## QUESTION OF THE NUMBER OF STATES REQUISITE TO RATIFY AN AMENDMENT TO THE CONSTITUTION.

NOTE.—The publication of the following letter at this time calls for no apology. The subject is so important in itself, and the views contained in the letter impressed me as so conclusive, that it seemed to me eminently proper to give them publicity, and, at my urgent request, the writer has given his consent to such disposition of it. C. KNAP.

WASHINGTON, February 20, 1865.

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WASHINGTON, February 18, 1865.

MY DEAR KNAP: Agreeably to your request, I proceed to jot down the substance of the views expressed in our conversation to-day, in relation to the number of States required to ratify the Constitutional amendment abolishing slavery. I apprehend you will find very little that is new, as most right-thinking men, who have given attention to the subject, have undoubtedly come to the same conclusion. But the persistency with which certain leading journals and politicians detract from the just authority of the Government and the validity of its proceedings as being unconstitutional, on the plea that certain integral and essential elements

of the Confederacy (as they love to term it) are not represented, renders it proper, and it is high time, that all such heresies should be put down by the American people. While we are at the work of restoring and reinaugurating the truth, which has so long been concealed in the deep well of Virginia abstractions, we should strangle each head of that hydra of error which has led our country to the verge of destruction. If, from motives of expediency or clemency, we should conclude, in any case, to *waive* the truth, we ought, at least, to *recognize* it, and place it upon its own proper pedestal. A different course will only lead to misunderstandings and embarrassments hereafter. I consider the doctrine that a State, by withdrawing from the Union, can produce any deficiency in the "quorum," or other derangement of the organic functions, so as to render constitutionally nugatory any action or proceeding of the Government, quite as repugnant to all just ideas of constitutional law as is the doctrine of secession itself. And, therefore, I entirely concur in the conclusion arrived at by Mr. Sumner in the joint resolution offered by him in the Senate on the 4th instant, that the rebellious States are not to be counted in estimating the number of States of which three-fourths are required to ratify and validate the amendment in question. Whether it would or would not be politic to count them is a different question, which I do not discuss.

Congress having, by a vote of two-thirds of both Houses, proposed this amendment to the legislatures of the several States, the fifth article of the Constitution declares that, "when ratified by the legislatures of three-fourths of *the several States*," it will be valid

as a part of the Constitution. The question is, What are "*the several States*" intended in that article? I contend that they are those, and only those, States which are connected with the Union *as States* when the amendment is passed upon.

It is certainly clear that the Constitution did not refer merely to the thirteen States which were then organized, and in confederate relations with each other. It might have been only nine of those States, had only nine adopted the Constitution; and as the power to admit new States is expressly given, it may be a hundred, if so many shall at any time be formed under the Constitution. Otherwise the object of the clause, namely, to secure a large preponderance of the body politic in favor of an amendment before giving it validity, would be frustated. If three-fourths of the original thirteen were meant, ten of the old States could at any time ratify an amendment which would bind, perchance, a hundred States. This could not have been the intent. The clause, therefore, must have respect to the States which, in the sense of the Constitution, are, or shall be, *States* whenever an amendment is proposed, whether they include all or do not include any of the original thirteen.

This point being established, the next proposition, equally clear and demonstrable, is, that, although there may be and is such a thing as actual secession, there is no such thing as a *right of secession*, any more than there is a right of rebellion or revolution. The word "right" indicates a liberty of action or possession guaranteed by the social law, that is, the law which binds civil society together. But revolution is an abrogation of the pre-existing bonds of civil

society. The very provision for making amendments to the Constitution was intended to obviate every pretence for revolution. Now, by adopting the Constitution, the people of the United States erased and abrogated all State jurisdiction in the matters of sovereignty embraced within the scope of that instrument, and, in so many words, declared: "This Constitution, and the laws of the United States made in pursuance thereof, and all treaties made, etc., shall be *the supreme law of the land.*" These portions of the general sovereignty were lodged in the general Government, not as a fief to be *holden* by any sort of *tenure* of or from the State sovereignties, but as the undoubted prerogative and *allodium* of the whole people of the United States, independent, outside of, and above the State sovereignties; so that, in very truth, the Constitution and laws of the Federal Government became, in their nature, as they were thus declared to be, "*the supreme law of the land.*" After this no State had or could have any right to secede. To do so would be to set at naught or at defiance "the supreme law of the land," which no State can repeal, and over which no State has control. Within the constitutional scope, which embraces all the most important branches of national sovereignty, such as the foreign relations, war, peace, army, navy, controversies between the States themselves, commerce, citizenship, money, weights and measures, etc., there is but one country, one "land," and one "supreme law of the land." Just as well might any county in a State claim a right to secede from the State, as for a State to claim the right to secede from the Union. The attempt in either case would be an attempt to disrupt the bands of civil

society as organized in that community of which the seceding body is a part. A State is a limited and subordinate sovereignty—limited and subordinate, because destitute of those transcendent powers which more particularly characterize nationality. Those powers have, by the ultimate source of political power—a source superior to that from which any State power is derived, namely, the whole people of the United States—been lodged in a separate and superior government. And hence, if a State could lawfully secede, it would only carry with it legitimately those subordinate branches of sovereignty which it possesses, and which are not lodged in the general Government. It is true, countries and peoples, formerly one, do sometimes violently separate from each other. But it is revolution when they do so; and it is revolution here.

But while there is no such thing as a right of secession, and while, in all national respects, as before said, we are one people, and this is one country, yet in the eye of the Constitution, the States for many purposes have separate existence and status as such. The members of the House of Representatives are elected by the people of the several States—no congressional district being formed from two States; each State is entitled to a certain number of Representatives and Senators; each State owes certain constitutional duties to the other States, and to the general Government; and the general Government owes certain duties to the States, one of which is to guarantee to every one of them a republican form of government, and to protect them from invasion and domestic violence. The States, therefore, having a separate existence, and being clothed with the

forms of political sovereignty, and acting in all domestic and internal matters as independent communities, they can, *de facto*, secede, and by their actual secession cause a vacancy in the associated circle of communities forming the United States, which is calculated to embarrass a fair exposition of Constitutional rights and duties, both of the general and State Governments. This is the difficulty to be solved.

Now, suppose a single State in the national body politic—Maryland, for example—should, through all its organisms, popular, legislative, executive, judicial, secede from the Union, and repudiate the Constitution, and forcibly prevent the exercise of any Federal authority in her territory, what would be the status of that State? The territory of the State would, of course, remain where it was in spite of secession, and the inhabitants would remain upon the territory. But the State does not consist merely of the one nor of the other, nor of both, without a certain political organization. If, for example, all the inhabitants of that State, with their entire political organization, should remove to the Western plains, and there continue their social and political life, they would no longer be the State of Maryland; and on the other hand, without inhabitants and a certain organized community, the territory of Maryland would cease to be a State. It would be the territory which was once called the State of Maryland, but it would cease to be such. Yet it would not be out of the United States, nor free from the laws of the United States; nor would it be so by the supposed act of secession.

With this preliminary observation, I ask again, what would be the status of Maryland after thus seced-

ing from the Union? What would be the status of her territory and its inhabitants? Are they any longer a "*State*" within the meaning of the Constitution? They may be *de facto* a State, in the popular sense of the term; but are they a State in the Constitutional sense? Are they entitled to the rights which the Constitution secures to "*the several States?*" When a citizen of Maryland, for example, should come into any other State, would he be entitled, any longer, to all the privileges and immunities of its own citizens? Do we concede this privilege now, to citizens of Alabama? May they come within our lines, and take rooms at our hotels, and trade and converse with our people? And in the hypothetical case of Maryland, would the general Government any longer be bound to guarantee to her a republican form of government? Would the other States be bound to return her fugitives from justice and her fugitives from service? Would they be bound to give full faith and credit to her legislative acts and judicial proceedings? Would the Supreme Court be bound to hear and decide her controversies with the other States? If Maryland, under such circumstances, should send two persons to the Senate of the United States, and demand that they should sit in that body, would it be allowed? To ask these questions is to answer them. It would be absurd to answer them in the affirmative. It is an intuitive principle, growing out of the very nature of right, and obligation, and law, and, therefore, a fundamental maxim of all codes, that he who violates, repudiates, and contemns a contract, cannot claim its collateral advantages. If it is a lease of land, he loses all claim to the land. If it is an agreement, he can claim no

benefit from the agreement. As respects the bond repudiated, he is an alien; he has no rights, and no claims, except upon the clemency of the other party. So he who repudiates and contemns the social bond, and wages war against mankind, is a pirate, and is entitled to the protection of no law, for the very reason that he has repudiated all law. And so, in the case supposed, Maryland, by repudiating and trampling upon the bond of our national social compact, would be no longer entitled to any of the benefits or any of the considerations of that compact. She puts herself out of the pale of the Constitution, and shuts her mouth to all objections arising out of her wrongful position.

Then what, in relation to the Federal Constitution and Government, would be her condition and status? Though she has seceded in fact, she cannot secede in law; and yet having seceded in fact, she—that is, her people—are entitled to no regards as "a State." And there lies her territory in the very heart of the country, cutting it in twain. What are the logical results of her condition?

Are we told that we must reduce her people to obedience? This the general Government unquestionably may do, and should do. But still the question recurs, what is the Constitutional status of Maryland and its inhabitants *in the meantime?* And suppose they will not be reduced to obedience? They prefer extermination; they fight to the last ditch, and die in it; or they are expelled and banished. What then? Will the territory belong to nobody? May England people it again with colonists? May France sieze it as virgin territory, and hold it by right of occupancy?

Has the United States no right of political dominion in it? It seems to me perfectly clear that the Government of the United States would be entitled to invite settlers to replant it. If it might do this, would these settlers be a State perforce, and without the consent of the United States Government? Is a particular tract of land necessarily a State because a State was once organized upon it? This we have seen is not so. If, then, new settlers, placed upon the territory by the general Government, could not act as a State without the consent of that Government, could a people who have lost all rights as a State under the Constitution, and who, by the strong arm of the Government, have been reduced to obedience, claim it as a right to act again as a State on that same territory? Could they claim to resume and proceed with all the functions of a State, as though nothing had happened?

These questions lead unerringly to the true solution of the difficulty.

The territory of Maryland is a part of that country, that "land" over which the people of the United States have constituted the Federal Government, by that Constitution which they have declared to be "the supreme law of the land." This territory cannot be wrenched from its subjection to the authority of that Government. There is, there can be, no right of secession. It is a Constitutional solecism. But if the people of the State, acting through their State organization, and as a State, have forfeited all claim to be considered as a State—as in the case supposed they clearly would—then it follows (and no other conclusion can be logically drawn) that the general Government has a right to occupy the obnoxious territory by

its armies, and in all other ways, and to impose such condition of habitancy therein as it sees fit to do, and as it would have a right to do in relation to any conquered or purchased territory. Any other conclusion would be subversive of the Government itself, by putting it into the power of any State, by indirection, to stop the wheels of government, and thus practically to exert the right of secession, which it is admitted does not exist. The recreant State by seceding, renounces her rights and status as a State, and the Government takes her at her word; but also adheres to and enforces that other relation in which her *territory* stands to the country and Constitution, as an integral portion of the territory of the United States.

It follows as a corollary, that a seceding State, which repudiates and disclaims the Constitution, *is not a State* within the meaning of the Constitution, but has ceased to be such; and, therefore, that its action cannot in any manner clog the wheels or embarrass the movements of the Government. The territory of the United States remains the same; there is only one State the less within that territory. The organization of the various departments of the Government, executive, legislative, judicial, is not affected nor changed. Quorums of representative bodies, such as the Senate and House of Representatives, are not destroyed or rendered impracticable. The Government moves serenely on; and if the people of a particular State will not have the Government to rule over them, they simply lose their status as a State in the eye and within the meaning of the Constitution, and remain subject to the clemency of the Government.

As a matter of policy and expediency, it might, and probably would be advisable, in such a case, to

receive the erring sister back again as a State as soon as she gets tired of secession. And the most expedient manner of doing this might, and perhaps would be that indicated by the enunciations of General Sherman, namely, by silently allowing her representatives to take their seats in the Congress, whenever Congress is satisfied of her returning loyalty, and quietly setting the wheels of Government in motion again in her territory. Such a course taken by the two Houses of Congress would probably be as valid a process for readmission as a joint resolution was in the case of Texas for the original admission of a State; for it would be tantamount to a joint resolution.

But be this as it may, in strict right, and as a matter of Constitutional law, the seceding State, while in a state of actual secession, cannot be reckoned as a State for the purpose of claiming any rights or interposing any obstacles to the action of the Government or people of the United States, or for any other Constitutional purposes.

To admit for a moment that the wrongful secession of a State, or a number of States can embarrass the proceedings required to amend the Constitution, or to perform any function of the Government, would be to enable disloyal and rebellious States to deprive the people of loyal and faithful States of their most valued privileges. One of the most valuable privileges secured to the people of the United States is the right to amend their Constitution and Government by peaceable means—a right which few other nations enjoy; and hence their bloody revolutions for redress of grievances. Englishmen secured this right by the revolution of 1688, and highly do they prize it. The progress of

ideas in the world, and the steady advance of civilization, require gradual changes in the organic law. But, if seceding States are to be included in the roll-call of States when an amendment is proposed, the permanent secession of ten States would forever present a bar to any amendment being made, and their temporary secession would temporarily suspend the Constitutional prerogatives of the Government and people.

We should not for a moment listen to any such absurd proposition. If a State secedes, she, by her own act, ceases to be a State, but her territory does not (except by force of successful rebellion) cease to be a portion of the territory of the United States. Her readmission as a State cannot be claimed as a right, but must depend upon the authority and consent of the Federal Government.

It follows as a further corollary, that any amendment of the Constitution requiring the approval of a majority of the States, is valid when approved by a majority of those States which adhere to the Government. If others have put it out of their own power to co-operate in the matter, either by approval or rejection, it is their own fault and their own misfortune, and not that of the country or of the loyal States. And when they come back again as States, if they ever do, they will be bound by what the Government and people of the United States have done in their absence; and they can never plead their own wrong as a bar to the validity of such action. They might as well complain that the amendment was not presented to them for their ratification when they had armies in the field to prevent any intercourse with them! For, if they are to be reckoned as States,

whose approval or rejection is necessary, they could logically argue that a failure to propose to them a contemplated amendment would be a fatal objection to its validity.

At the present time eleven States are in a state of secession *de facto* (or rebellion, if that expression is preferred), and twenty-five States remain true to the Government and Constitution. Therefore, the ratification of the amendment in question by nineteen States not in secession will make it valid as a part of the Constitution. This is the clear dictate of Constitutional law.

I do not know that the present exigencies of the country render this view of the subject practically important. Both Houses of Congress virtually assumed it as the true one when they declared that a majority of the Senators and Representatives elected to each House respectively was sufficient to form a quorum; thus obviating one of the difficulties which a contrary doctrine would create. The great desideratum of the present hour is to insure the success of our arms in quelling the rebellion. That once quelled, there is little doubt that three-fourths of all the States, including those which have no Constitutional claim to be treated as such, but which will undoubtedly be welcomed back to their allegiance, will readily be found to approve of the proposed amendment. The recruiting of the army with stalwart and honest men is at present the great and absorbing duty of the nation.

I am, as ever, yours,

JOSEPH P. BRADLEY.

CHARLES KNAP, Esq.,
Washington.

# OPINIONS AND REMARKS

OF

# MR. COMMISSIONER BRADLEY

IN THE CONSULTATIONS OF THE

# ELECTORAL COMMISSION

UPON THE

# ELECTORAL VOTES OF FLORIDA, LOUISIANA AND OREGON.

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**The following opinions and remarks have been somewhat abbreviated, and repetition of the same arguments in the different cases has been omitted.**

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## THE FLORIDA CASE.

In this case the objectors to the Certificate No. 1 (which was authenticated by Governor Stearns, and contained the votes of the Hayes electors) proposed to prove by the papers accompanying the certificates, that a writ of quo warranto had been issued from a district court in Florida against the Hayes electors on the 6th day of December, before they gave their votes for President and Vice-President, which on January 26, 1877, resulted in a judgment against them, and in favor of the Tilden electors; also an act of the Legislature passed in January, in favor of the Tilden electors; and also certain extrinsic evidence described by the counsel of the objectors as follows:

"Fifthly. The only matters which the Tilden electors desire to lay before the Commission by evidence actually extrinsic will now be stated.

"I. The Board of State Canvassers, acting on certain erroneous views when making their canvass, by which the Hayes electors appeared to be chosen, rejected wholly the returns from the county of Manatee and parts of returns from each of the following counties: Hamilton, Jackson, and Monroe.

"In so doing the said State board acted without jurisdiction, as the Circuit and Supreme Courts in Florida decided. It was by overruling and setting aside as not warranted by law these rejections, that the courts of Florida reached their respective conclusions that Mr. Drew was elected Governor, that the Hayes electors were usurpers, and that the Tilden electors were duly chosen.

"II. Evidence that Mr. Humphreys, a Hayes elector, held office under the United States.

The question was argued as to the admissibility of this evidence.

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## Substance of Justice Bradley's Opinion, Delivered February 9, 1877.

I assume that the powers of the Commission are precisely those, and no other, which the two Houses of Congress possess in the matter submitted to our consideration; and that the extent of that power is one of the questions submitted. This is my interpretation of the act under which we are organized.

The first question, therefore, is, whether and how far, the two Houses, in the exercise of the special jurisdiction conferred on them in the matter of counting the electoral votes, have power to inquire into the validity of the votes transmitted to the President of

the Senate. Their power to make any inquiry at all is disputed by, or on behalf of, the President of the Senate himself. But, I think the practice of the Government, as well as the true construction of the Constitution, have settled, that the powers of the President of the Senate are merely ministerial, conferred upon him as a matter of convenience as being the presiding officer of one of the two bodies which are to meet for the counting of the votes, and determining the election. He is not invested with any authority for making any investigation outside of the joint meeting of the two Houses. He cannot send for persons or papers. He is utterly without the means or the power to do anything more than to inspect the documents sent to him; and he cannot inspect them until he opens them in presence of the two Houses. It would seem to be clear, therefore, that if any examination at all is to be gone into, or any judgment is to be exercised in relation to the votes received, it must be performed and exercised by the two Houses.

Then arises the question, how far can the two Houses go in questioning the votes received without trenching upon the power reserved to the States themselves?

The extreme reticence of the Constitution on the subject leaves wide room for inference. Each State has a just right to have the entire and exclusive control of its own vote for the Chief Magistrate and head of the republic, without any interference on the part of any other State, acting either separately or in congress with others. If there is any State right of which it is and should be more jealous than of any other, it is this. And such seems to have been the

spirit manifested by the framers of the Constitution. This is evidenced by the terms in which the mode of choosing the President and Vice-President is expressed. "Each State shall appoint—in such manner as the legislature thereof may direct—a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress:—but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. The electors shall meet in their respective States and vote by ballot, etc." Almost every clause here cited is fraught with the sentiment to which I have alluded. The appointment and mode of appointment belong exclusively to the State. Congress has nothing to do with it, and no control over it, except that, in a subsequent clause, Congress is empowered to determine the time of choosing the electors, and the day on which they shall give their votes, which is required to be the same day throughout the United States. In all other respects the jurisdiction and power of the State is controlling and exclusive until the functions of the electors have been performed. So completely is Congressional and Federal influence excluded that not a member of Congress or an officer of the general Government is allowed to be an elector. Of course, this exclusive power and control of the State is ended and determined when the day fixed by Congress for voting has arrived, and the electors have deposited their votes and made out the lists and certificates required by the Constitution. Up to that time the whole proceeding (except the time of election) is conducted under State law and State authority. All machinery,

whether of police, examining boards or judicial tribunals, deemed requisite and necessary for securing and preserving the true voice of the State in the appointment of electors, is prescribed and provided for by the State itself and not by Congress. All rules and regulations for the employment of this machinery are also within the exclusive province of the State. All over this field of jurisdiction the State must be deemed to have ordained, enacted, and provided all that it considers necessary and proper to be done.

This being so, can Congress, or the two Houses, institute a scrutiny into the action of the State authorities, and sit in judgment on what they have done? Are not the findings and recorded determinations of the State board, or constituted authorities, binding and conclusive, since the State can only act through its constituted authorities?

But, it is asked, must the two Houses of Congress submit to outrageous frauds and permit them to prevail without any effort to circumvent them? Certainly not, if it is within their jurisdiction to inquire into such frauds. But there is the very question to be solved. Where is such jurisdiction to be found? If it does not exist, how are the two Houses constitutionally to know that frauds have been committed? It is the business and the jurisdiction of the State to prevent frauds from being perpetrated in the appointment of its electors, and not the business or jurisdiction of the Congress. The State is a sovereign power within its own jurisdiction, and Congress can no more control or review the exercise of that jurisdiction than it can that of a foreign government. That which exclusively

belongs to one tribunal or government cannot be passed upon by another. The determination of each is conclusive within its own sphere.

It seems to me to be clear, therefore, that Congress cannot institute a scrutiny into the appointment of electors by a State. It would be taking it out of the hands of the State, to which it properly belongs. This never could have been contemplated by the people of the States when they agreed to the Constitution. It would be going one step further back than that instrument allows. Whilst the two Houses of Congress are authorized to canvass the electoral votes, no authority is given to them to canvass the election of the electors themselves. To revise the canvass of that election, as made by the State authorities, on the suggestion of fraud, or for any other cause, would be tantamount to a recanvass.

The case of elections of Senators and Representatives is different. The Constitution expressly declares that "each House shall be the judge of the elections, returns and qualifications of its own members." No such power is given, and none ever would have been given if proposed, over the election or appointment of the Presidential electors. Again, whilst the Constitution declares that "the times, places and manner of holding elections of Senators and Representatives shall be prescribed in each State by the legislature thereof," it adds, "but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." No such power is given to Congress to regulate the election or appointment of Presidential electors. Their appointment, and all regulations for making it, and the manner of making it, are left exclusively with the States.

This want of jurisdiction over the subject makes it clear to my mind that the two Houses of Congress cannot institute any scrutiny into the appointment of Presidential electors, as they may and do in reference to the election of their own members. The utmost they can do is to ascertain whether the State has made an appointment according to the form prescribed by its laws.

This view receives corroboration from the form of a bill introduced into Congress in 1800 for prescribing the mode of deciding disputed elections of President and Vice-President, and which was passed by the Senate. It proposed a grand committee to inquire into the Constitutional qualifications of the persons voted for as President and Vice-President, and of the electors appointed by the States, and various other matters with regard to their appointment and transactions; but it contained a proviso, in which both Houses seem to have concurred, that no petition or exception should be granted or allowed which should have for its object to draw into question the number of votes on which any elector had been elected.

This bill was the proposition of the Federal party of that day, which, as is well known, entertained strong views with regard to the power of the Federal Government as related to the State governments. It was defeated by the opposition of the Republican side, as being too great an interference with the independence of the States in reference to the election of President and Vice-President. And taken even as the Federal view of the subject, it only shows what matters were regarded as subject to examination under the regulation of law, and not that the two Houses

of Congress, when assembled to count the votes, could do the same without the aid of legislation. The bill was rather an admission that legislation was necessary in order to provide the proper machinery for making extrinsic inquiries.

It is unnecessary to enlarge upon the danger of Congress assuming powers in this behalf that do not clearly belong to it. The appetite for power in that body, if indulged in without great prudence, would have a strong tendency to interfere with that freedom and independence which it was intended the States should enjoy in the choice of the national Chief Magistrate, and to give Congress a control over the subject which it was intended it should not have.

As the power of Congress, therefore, does not extend to the making of a general scrutiny into the appointment of electors, inasmuch as it would thereby invade the right of the States, so neither can it draw in question, nor sit in judgment upon, the determination and conclusion of the regularly constituted authorities or tribunals appointed by the laws of the States for ascertaining and certifying such appointment.

And here the inquiry naturally arises, as to the manner in which the electors appointed by a State are to be accredited. What are the proper credentials by which it is to be made known who have been appointed. Obviously if no provision of law existed on the subject, the proper mode would be for the Governor of the State, as its political head and chief, through whom its acts are made known, and by whom its external intercourse is conducted, to issue such credentials. But we are not without law on the

subject. The Constitution, it is true, is silent; but Congress, by the act of 1792, directed that "it shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified and to be delivered to the electors on or before the day on which they are required to meet"; and one of these certificates is directed to be annexed to each of the certificates of the votes given by the electors. And if it should be contended that this enactment of Congress is not binding upon the State executive, the laws of Florida, in the case before us, impose upon the Governor of that State the same duty. I think, therefore, that it cannot be denied that the certificate of the Governor is the proper and regular credential of the appointment and official character of the electors. Certainly it is at least *prima facie* evidence of a very high character.

But the Houses of Congress may undoubtedly inquire whether the supposed certificate of the executive is genuine; and I think they may also inquire whether it is plainly false, or whether it contains a clear mistake of fact, inasmuch as it is not itself the appointment, nor the ascertainment thereof, but only the certificate of the fact of appointment. Whilst it must be held as a document of high nature, not to be lightly questioned, it seems to me that a State ought not to be deprived of its vote by a clear mistake of fact inadvertently contained in the Governor's certificate, or (if such a case may be supposed) by a willfully false statement. It has not the full sanctity which belongs to a court of record, or which, in my judgment, belongs to the proceedings and recorded acts of the final board of canvassers.

In this case, it is not claimed that the certificate of the Governor contains any mistake of fact, or that it is willfully false and fraudulent. It truly represents the result of the State canvass, and if erroneous at all, it is erroneous because the proceedings of the canvassing board were erroneous or based on erroneous principles and findings.

It seems to me that the two Houses of Congress, in proceeding with the count, are bound to recognize the determination of the State Board of Canvassers as the act of the State, and as the most authentic evidence of the appointment made by the State; and that whilst they may go behind the Governor's certificate, if necessary, they can only do so for the purpose of ascertaining whether he has truly certified the results to which the board arrived. They cannot sit as a court of appeals on the action of that board.

The law of Florida declares as follows:

> On the thirty-fifth day after the holding of any general or special election for any State officer, member of the legislature, or Representative in Congress, or sooner, if the returns shall have been received from the several counties wherein elections shall have been held, the Secretary of State, Attorney-General and the Comptroller of Public Accounts, or any two of them, together with any other member of the Cabinet who may be designated by them, shall meet at the office of the Secretary of State, pursuant to notice to be given by the Secretary of State, and form a Board of State Canvassers, and proceed to canvass the returns of said election and *determine and declare who shall have been elected to any such office or as such member, as shown by such returns.*

The Governor's certificate is *prima facie* evidence that the State canvassers performed their duty. Indeed, it is conceded by the objectors that they made a canvass and certified or declared the same. It is not the failure of the board to act, or to certify and

declare the result of their action, but an illegal canvass, of which they complain. To review that canvass, in my judgment, the Houses of Congress have no jurisdiction or power.

The question then arises, whether the subsequent action of the courts or legislature of Florida can change the result arrived at and declared by the Board of State Canvassers, and consummated by the vote of the electors, and the complete execution of their functions?

If the action of the State Board of Canvassers were a mere statement of a fact, like the certificate of the Governor, and did not involve the exercise of decision and judgment, perhaps it might be controverted by evidence of an equally high character. Like the return to a *habeas corpus*, which could not in former times be contradicted by parol proof, but might be contradicted by a verdict or judgment in an action for a false return.

Looking at the subject in this point of view, I was, at one time, inclined to think that the proceedings on *quo warranto* in the Circuit Court of Florida, if still in force and effect, might be sufficient to contradict the finding and determination of the board of canvassers—supposing that the court had jurisdiction of the case. But the action of the board involved more than a mere statement of fact. It was a determination, a decision *quasi* judicial. The powers of the board as defined by the statute which created it are expressed in the following terms: "They shall proceed to canvass the returns of said election and determine and declare who shall have been elected to any office"; and "if any such returns shall be shown or shall appear to be so irregu-

lar, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration." This clearly requires *quasi* judicial action. To controvert the finding of the board, therefore, would not be to correct a mere statement of fact, but to reverse the decision and determination of a tribunal. The judgment on the *quo warranto* was an attempted reversal of this decision, and the rendering of another decision. If the court had had jurisdiction of the subject-matter, and had rendered its decision before the votes of the electors were cast, its judgment, instead of that of the returning board, would have been the final declaration of the result of the election. But its decision being rendered after the votes were given, it cannot have the operation to change or affect the vote, whatever effect it might have in a future judicial proceeding in relation to the Presidential election. The official acts of officers *de facto* until they are ousted by judicial process or otherwise are valid and binding.

But it is a grave question whether any courts can thus interfere with the course of the election for President and Vice-President. The remarks of Mr. Justice Miller on this subject are of great force and weight.

The State may, undoubtedly, provide by law for reviewing the action of the board of canvassers, at any time before the electors have executed their functions. It may provide any safeguard it pleases to prevent or counteract fraud, mistake, or illegality on the part of the canvassers. The legislature may pass a law requiring the attendance of the Supreme Court, or any other tribunal, to supervise the action of the

board, and to reverse it if wrong. But no such provision being made, the final action of the board must be accepted as the action of the State. No tampering with the result can be admitted after the day fixed by Congress for casting the electoral votes, and after it has become manifest where the pinch of the contest for the Presidency lies, and how it may be manipulated.

I am entirely clear that the judicial proceedings in this case were destitute of validity to affect the votes given by the electors. Declared by the board of canvassers to have been elected, they were entitled, by virtue of that declaration, to act as such against all the world until ousted of their office. They proceeded to perform the entire functions of that office. They deposited their votes in a regular manner, and on the proper and only day designated for that purpose, and their act could not be annulled by the subsequent proceedings on the *quo warranto*, however valid these might be for other purposes. When their votes were given, they were the legally constituted electors for the State of Florida.

The Supreme Court of Florida said, in the Drew case, it is true, that the board of canvassers exceeded their jurisdiction, and that their acts were absolutely void. In this assertion I do not concur; and it was not necessary to the judgment, which merely set aside the finding of the board and directed a new canvass. Under the Florida statute the board had power to cast out returns. They did so. The court thought they ought to have cast out on a different principle from that which they adopted. This was at most error, not want or excess of jurisdiction. They certainly acted within the scope of their power, though

they may have acted erroneously. This is the most that can be said in any event; and of this the Houses of Congress cannot sit in judgment as a court of appeal.

The question is asked, whether for no cause whatever the declaration and certificate of the board of canvassers can be disregarded—as, if they should certify an election when no election had been held, and other extreme cases of that sort? I do not say that a clear and evident mistake of fact inadvertently made, and admitted to have been made, by the canvassers themselves, or that such a gross fraud and violation of duty as that supposed, might not be corrected, or that it might not affect the validity of the vote. On that subject, as it is not necessary in this case, I express no opinion. Such extreme cases, when they occur, generally suggest some special rule for themselves without unsettling those general rules and principles which are the only safe guides in ordinary cases. The difficulty is, that the two Houses are not made the judges of the election and return of Presidential electors.

I think no importance is to be attached to the acts performed by the board of canvassers after the sixth day of December; nor to the acts of the Florida legislature in reference to the canvass. In my judgment they are all unconstitutional and void. To allow a State legislature in any way to change the appointment of electors after they have been elected and given their votes, would be extremely dangerous. It would, in effect, make the legislature for the time being the electors, and would subvert the design of the Constitution in requiring all the electoral votes to be given on the same day.

My conclusion is that the validity of the first certificate cannot be controverted by evidence of the proceedings had in the courts of Florida, by *quo warranto;* and that said evidence should not be received.

It is further objected that Humphreys, one of the Hayes electors, held an office of trust and profit under the Government of the United States at the time of the general election, and at the time of giving his vote. I think the evidence of this fact should be admitted. Such an office is a Constitutional disqualification. I do not think it requires legislation to make it binding. What may be the effect of the evidence when produced, I am not prepared to say. I should like to hear further argument on the subject before deciding the question.

[It being shown that Humphreys resigned his office before the election, the question of ineligibility became unimportant. Justice Bradley held, however, that the Constitutional prohibition, that no member of Congress, or officer of the Government, should be appointed an elector is only a form of declaring a disqualification for the electoral office, and does not have the effect of annulling the vote given by one who, though disqualified, is regularly elected, and acts as an elector; likening it to the case of other officers *de facto.*]

## II.—THE LOUISIANA CASE.

The objections to the votes of the electors certified by Kellogg, as Governor of Louisiana, being condensed, are in substance as follows:

FIRST.—That the government of Louisiana is not republican in form.

SECOND.—That Kellogg was not Governor.

THIRD.—That at the time of the election, in November last, there was no law of the State directing the appointment of electors.

FOURTH.—That so much of the election law which was in force as relates to the returning board was unconstitutional and void.

FIFTH.—That the board was not constituted according to the law; having only four members of one political party, when there should have been five members of different political parties.

SIXTHLY.—That they acted fraudulently and without jurisdiction in casting out and rejecting the returns or statements of various commissioners of election, without having before them any statement or affidavit of violence or intimidation as required by law to give them jurisdiction to reject returns; that they neglected to canvass the returns of the commissioners and canvassed those of the supervisors of registration—that is, the parish abstracts instead of the precinct returns; that they did not canvass all of these (which would have elected the Tilden electors), but falsely and fraudulently counted in the Hayes electors, knowing the count to be false; and that they offered to give the votes the other way for a bribe; and that the certificate given by Kellogg to the Hayes electors was the result of a conspiracy between Kellogg and the return-

ing board and others to defraud their opponents of their election and the State of her right to vote; and that the Hayes electors were not elected, but their opponents were.

SEVENTHLY.—That two of the electors certified by Kellogg were ineligible at the time of the election by holding office under the Government of the United States; and that others were ineligible by holding State offices; and that Kellogg could not legally certify himself as an elector.

FEBRUARY 16, 1877.

JUSTICE BRADLEY:—

The first two objections, that the State is without a republican form of government, and that Kellogg was not Governor, are not seriously insisted upon.

The question whether the State had any law directing the appointment of electors of President and Vice-President, and regulating their proceedings, depends on whether the Presidential electoral law of 1868 was or was not repealed by the general election law of 1872, which is admitted to have been in force at the time of the last election.

The repealing clause relied on is in the last section of the act, and is in these words: "That this act shall take effect from and after its passage, and that all others on the subject of *election laws* be and the same are hereby repealed." The question is, whether the act relating to Presidential electors is an act "on the subject of *election laws*" within the meaning of this repealing clause. I am entirely satisfied that it is not, and that no part of it is repealed by the act of 1872, except one section which relates to the mode of returning and ascertaining the votes for electors. My reasons are these:

In the session of 1868, an act was passed, approved October 19, 1868, which professed to be a general election law, regulating the mode of holding and ascertaining the result of all elections in the State, making provision for preserving order thereat, and for executing generally the one hundred and third article of the Constitution, which declares that "the privilege of free suffrage shall be supported by laws regulating elections and prohibiting under adequate penalties all undue influence thereon from power, bribery, tumult, or other improper practice." A distinct act was passed at the same session, approved October 30, 1868, which is the act relating to Presidential electors, before referred to. It certainly was not supposed that one of these acts conflicted with the other. The one regulated the manner of holding and ascertaining the results of elections generally; the other prescribed the mode of appointing the Presidential electors to which the State was entitled, namely, that they should be elected on the day fixed by Congress, two for the State at large, and one in each Congressional district; prescribed their qualifications, and the time and place of their meeting to perform their duties; authorized them when met to fill any vacancies caused by the failure of any members to attend; and regulated their pay. One section, it is true, directed the manner in which the returns should be canvassed, namely, by the Governor in presence of the Secretary of State, the Attorney General, and a district judge; and the first section directed that the election for electors should be held on the day appointed by the act of Congress, and that it should be held and conducted in the manner and form provided by law for general State elections.

At the same session (1868) provision was made for revising all the general statutes of the State under the direction of a committee appointed for that purpose. This committee appointed Mr. John Ray to make the revision. It was duly reported, and adopted during the session of 1870. It contained, under the title of "Elections," the act of October 19, 1868; and under the title "Presidential Electors," the act of October 30, 1868; showing conclusively that at that time the two acts were not deemed incompatible with each other.

A new election law was passed at the same session as a substitute for that of October 19, 1868, repealing all conflicting laws; but it was not inserted in the revised statutes, because they did not contain any of the laws of that session. A law was passed, however, authorizing the reviser (Mr. Ray) to publish a new edition, under the name of a Digest, which should embrace the acts of 1870. This was done, and the new election law was inserted under the title, "Elections," in place of the old law. The act relating to Presidential electors was untouched, except to insert in it the new method of making the returns of the elections by the returning board, which was the only part of the new law which conflicted with it. It is apparent, therefore, that the election law of 1870 was not deemed repugnant to the law relating to "Presidential Electors," except in the one particular mentioned.

Now, the act of 1872, which it is alleged does repeal the law relating to Presidential electors, is simply a substitute for the general election law of 1870, going over and occupying exactly the same ground,

and no more, and making very slight alterations. The principle of these is the reconstruction of the returning board. With this exception it does not in the least conflict, any more than did the act of 1870, with the provisions of the law relating to "Presidential electors." And as the repealing clause therein (before referred to) is expressly confined to "acts on the subject of *election laws*," it seems to me most manifest that the intent was to repeal the election law only, and not that relating to "Presidential electors." This view is corroborated by the sixty-ninth section, which has this expression: "The violation of any provision of the act, or section of *the act, repealed by this act*, shall not be considered," etc. Repealing clauses should not be extended so as to repeal laws not in conflict with the new law, unless absolutely necessary to give effect to the words. And when we consider the consequences which a repeal of the law relating to Presidential electors would have, in depriving the State of its power to have vacancies in its electoral college filled, in introducing confusion and uncertainty as to the districts they should be chosen from, and by leaving no directions as to the time and place of their meeting, it seems clear that it could never have been in the mind of the legislature to repeal that law.

There is a section in the act of 1872 relating to vacancies which it has been suggested is repugnant to the authority of the electoral college to fill vacancies in that body. It is section 24, which enacts, "that all elections to be held in this State to fill any vacancies shall be conducted and managed and returns thereof shall be made, in the same manner as is provided for general elections." But this is explained by

the fact that both the Constitution and the election law itself direct vacancies in certain offices named (including that of members of the legislature) to be filled by a new election. The twenty-fourth section means only, that where elections are to be held to fill vacancies, they shall be held in the usual manner. It cannot mean that all vacancies shall be filled by another election; because the Constitution expressly gives to the Governor the power to fill vacancies in certain cases.

I am clearly of opinion, therefore, that the law relating to Presidential electors has not been repealed, except as to the mode of canvassing the returns; and that that is to be performed by the returning board created by the act of 1872, in lieu of the Lynch returning board created by the act of 1870, and in lieu of the method originally prescribed in the law relating to Presidential electors.

This disposes of the objection that the electoral college had no power to fill vacancies in its own body, since the electoral law has a section which expressly authorizes the college to fill any vacancy that may occur by the non-attendance of any of the electors by four o'clock in the afternoon of the day for giving their votes.

But it is insisted that that part of the election law of 1872 which re-establishes the returning board, and gives it its powers, is unconstitutional. The act declares "that five persons, to be elected by the Senate from all political parties, shall be the returning officers for all elections. In case of any vacancy by death, resignation or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers."

The powers and duties of the board are, to meet in New Orleans within ten days after the election, canvass and compile the statement of votes made by the commissioners of election, and make returns of the election to the Secretary of State, and publish a copy in the public journals, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. It is declared that the returns thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside after contest according to law, of the right of any person declared elected. On receiving notice from any supervisor of election supported by affidavits, and being convinced by examination and testimony, that by reason of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, the purity and freedom of election at any voting place were materially interfered with, or a sufficient number of qualified voters to change the result were prevented from registering and voting, it is made the duty of the board to exclude from their returns the votes given at such voting place.

Why this law is unconstitutional, I cannot perceive. The powers given may be abused, it is true; but that is the case with all powers. The constitutionality of the board has been considered by the Supreme Court of Louisiana, and has been fully sustained. It is said that the term of office is indefinite, and might continue for life. But where no period is fixed for the tenureof an office, it is held at the will of the appointing power, which may, at any time, make a new appointment. So that no evil consequences can ensue from this cause.

If the members of the board were appointed for a term, the Senate could re-appoint them. Allowing them to remain, when power exists to remove them at will, is substantially the same thing.

The objection that there were only four members constituting the board at the canvass in December last is met by the general rule of the law in regard to public bodies, that the happening of a vacancy does not destroy the body if a quorum still remains. The Supreme Court consists of nine Justices; but the court may be legally held though there are three vacancies, only six being required for a quorum. A vacancy in a branch of the legislature, in the board of supervisors of a county, in the commissioners or selectmen of a town, in the trustees of a school district, does not destroy the body, nor vitiate its action, unless there be an express law to make it do so.

But it is said that the power given to the board to fill vacancies in its own body is mandatory. It is in exactly the same terms as those contained in the election law of 1870 on the same subject. In several cases, arising under that act, the Supreme Court of Louisiana decided that this language was not compulsory, or, at least did not affect the legal constitution of the board if not complied with; but that the board was a legal board, though only four members remained in it. Had the board never been filled at all it might be urged with more plausibility that it was never legally constituted. If a court be created to consist of five judges, although, if once legally organized, a single judge might hold the court in the absence of the others; yet if only one judge were ever appointed it might very properly be said that no legal

organization had ever taken place. In this case the vacancy in the board occurred after it had been duly constituted by the appointment of the full number of members. Afterwards the vacancy occurred. And if it be the correct view, as was decided by the Supreme Court of Louisiana in regard to the Lynch board, that the power given to the remaining members to fill the vacancy is not mandatory, a neglect on their part to fill it does not, it seems to me, destroy the existence of the board, or deprive it of power to act. If it be true, as alleged, that members of only one political party remained on it, it may have been an impropriety in proceeding without filling the vacancy, and the motives of the members may have been bad motives, corrupt, fraudulent, what not; but with improprieties and with the motives of the members we have nothing to do. We are not the judges of their motives. The question with which we have to do is a question of power, of legal authority in four members to act. And of this I have no doubt. The board was directed "to be elected by the Senate from all political parties," it is true. It does not appear that this was not done. Can it be contended that the resignation or death of one of the members, who happened to be alone in his party connections, deprives the remainder of the power to act? I think not. If the four members remaining were all of different politics, the objection would lose all its force. So that it is resolved to this; that the power to fill a vacancy is mandatory when any political party ceases to be represented by the death or resignation of a member; and is not mandatory in any other case. Suppose, instead of dying or resigning, the member changes his party affiliations;

is there a vacancy then? Can the other members oust him, or can he oust them? The Senate, with whom resides the power of appointing a new board whenever it sees fit, might be in duty bound to act; but the same cannot be said of the board itself. If this were not Louisiana, but some State in which no charges of fraud and disorder were made, the objection would hardly be thought of as having any legal validity.

The next question relates to the alleged illegality and fraud in the proceedings of the returning board. Can the two Houses of Congress go behind their returns and certificate and examine into their conduct? I have already discussed this subject to some extent in the Florida case. I shall now only state briefly the conclusions to which I have come in this case.

First. I consider the Governor's certificate of the result of the canvass as *prima facie* evidence of the fact; but subject to examination and contradiction. This point has already been considered in the Florida case.

Secondly. The finding and return of the State canvassers of the election are, in their nature, of greater force and effect than the Governor's certificate, being that on which his certificate is founded, and being the final result of the political machinery established by the State to ascertain and determine the very fact in question. "*Each State shall appoint,*" is the language of the Constitution. Of course the two Houses must be satisfied that the State has appointed, and that the votes presented were given by its appointees. The primary proof of this, as prescribed by the laws of the United States, is the certificate of the Governor. But, as before stated, I do not deem

that conclusive. It may be shown to be false or erroneous in fact, or based upon the canvass and return of a board or tribunal that had no authority to act. This was conceded in the proceeding which took place with regard to the votes of Louisiana in 1873.

Was the returning board of Louisiana a tribunal, or body, constituted by the laws of the State, with power to ascertain and declare the result of the election, and did that board, in the exercise of the jurisdiction conferred upon it, ascertain and declare that result? This, it seems to me, is the point to be ascertained.

This involves an examination of the laws of the State to ascertain what that tribunal is and what general powers it is invested with, not for the purpose of seeing whether all the proceedings of the board, or of the election officers whose action preceded theirs, were in strict compliance with the law, but for the purpose of seeing whether the result comes from the authorities provided by the State, acting substantially within the scope of their appointment. This is necessary to be done in order to see whether (whatever irregularities may have occurred) it was the State which made the appointment, or some usurping body not authorized by the State at all.

The examination to be made is somewhat analogous to that made into the jurisdiction of a court when its judgment is collaterally assailed. If the board declared the result of the election, and, in so doing acted within the general scope of its powers, it seems to me that the inquiry should there end. The Constitutional power of the two Houses of Congress does not go further.

On the question of jurisdiction, I think it competent for the Houses to take notice of the fact (if such was the fact) that the returning board had no returns before it at all, and, in effect (to speak as we do of judicial proceedings), without having a case before it to act on; or of the fact (if such was the fact) that the board which pretended to act was not a legal board. This view was taken by both Houses, if I understand their action aright, in the count of 1873 in rejecting the electoral votes from Louisiana on that occasion. (Document on Electoral Counts, 407). Anything which shows a clear want of jurisdiction in the returning board divests its acts of authority, and makes it cease to be the representative of the will of the State. But it must appear that there was a clear and most manifest want of authority; for, otherwise the State might be deprived of its franchise by mere inadvertence of its agents, or an honest mistake made by them as to the law.

In the case before us the board had ample powers, as we have seen. These powers have frequently been sustained by the Supreme Court of the State. The law of Louisiana not only gives the board power to canvass the returns, but to reject returns whenever in their opinion, upon due examination had, they are satisfied that the vote was affected by violence and intimidation. They did no more in this case, supposing them to have done all that is alleged. It is said, that they proceeded without jurisdiction, because they did not canvass the statements of the commissioners of election, but only the abstracts of the parish supervisors of registration. It is not denied that they had both and all of these statements before them. If they

acted wrongfully in relying on the abstracts and not examining the original statements, it may have been misconduct on their part, but it cannot be said that they were acting beyond the scope of their jurisdiction. If, in a single case, and without coming to an erroneous result, they took the abstracts instead of the original returns, it would be just as fatal as a matter of jurisdiction (and no more so), as if they relied on the abstracts in all cases. It would only be error or misconduct, and not want of jurisdiction. And the Houses of Congress, as before said, are not a court of errors and appeals, for the purpose of examining regularity of proceedings.

It is also said, that they acted without jurisdiction in rejecting returns without having before them certificates of violence or intimidation. It is admitted that they took a large quantity of evidence themselves on the subject; but it is contended that they had no jurisdiction to enter upon the inquiry without a supervisor's certificate first had. Is this certain? The one hundred and third article of the Constitution made it the duty of the legislature to pass laws regulating elections, to support the privilege of free suffrage, and to prohibit undue influence thereon from power, bribery, tumults, or other improper influences. The election law was passed to carry out this article. As one means of carrying it out in spirit, the returning board were prohibited from counting a return if it was accompanied by a certificate of violence, until they had investigated the matter by examination and proof. Receiving such a certificate they could not count a return if they wanted to. Now, is it certain, that under such a law, if the board had knowledge

from other sources than a certificate, that violence and intimidation had been exercised and had produced the result, they could not inquire into it? And more, is their whole canvass to be set aside because they made an investigation under such circumstances? There is no other tribunal in Louisiana for making it. The Supreme Court has decided that the courts cannot go behind these returns. In my judgment we have no more authority to reject their canvass for this cause than for that of not using the original statements. It is as if a court having jurisdiction of a cause, used a piece of evidence on the trial which it had no jurisdiction to take. It would be mere irregularity at most, and would not render its judgment void in any collateral proceeding.

I cannot bring my mind to believe that fraud and misconduct on the part of the State authorities, constituted for the very purpose of declaring the final will of the State, is a subject over which the two Houses of Congress have jurisdiction to institute an examination. The question is not whether frauds ought to be tolerated, or whether they ought not to be circumvented; but whether the Houses of Congress, in exercising their power of counting the electoral votes, are entrusted by the Constitution with authority to investigate them. If in any case it should clearly and manifestly appear, in an unmistakable manner, that a direct fraud had been committed by a returning board in returning the electors they did, and if it did not require an investigation on the part of the two Houses to ascertain by the taking of evidence the truth of the case, I have no doubt that the Houses might rightfully reject the vote—as not being the vote

of the State, But where no such manifest fraud appears, and fraud is only charged, how are the two Houses to enter upon a career of investigation? If the field of inquiry were once opened, where is its boundary? Evidently no such proceeding was in the minds of the framers of the Constitution. The short and explicit directions there given, that the votes should first be produced before the Houses when met for that purpose, and that "the votes shall then be counted," is at variance with any such idea. An investigation beforehand is not authorized and was not contemplated, and would be repugnant to the limited and special power given. What jurisdiction have the Houses on the subject until they have met under the Constitution, except to provide by law for facilitating the performance of their duties? An investigation afterwards, such as the question raised might and frequently would lead to, would be utterly incompatible with the performance of the duty imposed.

At all events, on one or two points I am perfectly clear. First, that the two Houses do not constitute a canvassing board for the purpose of investigating and deciding on the results of the election for electors in a State. The proposed act of 1800 carefully excluded any inquiry into the number of votes on which any elector was elected; and I think it cannot well be pretended that the Houses have power to go further into the inquiry than was proposed by that bill. Secondly, that the two Houses are not a tribunal, or court for trying the validity of the election returns and sitting in judgment on the legality of the proceedings in the course of the election. The two Houses, with only their Constitutional jurisdiction, are neither

of these things; though as to the election, qualifications, and returns of their own members, they are certainly the latter, having the right to judge and decide.

I have thus far spoken of the power of the two Houses of Congress as derived from the Constitution. Whether the legislative power of the Government might not, by law, make provision for an investigation into frauds and illegalities, I do not undertake to decide. It cannot be done, in my judgment, by any agency of the Federal Government without legislative regulation. The necessity of an orderly mode of taking evidence and giving opportunity to cross-examine witnesses, would require the interposition of law. The ordinary power of the two Houses as legislative bodies, by which they investigate facts through the agency of committees, is illy adapted to such an inquiry.

It seems to me, however, the better conclusion, that the jurisdiction of the whole matter belongs exclusively to the States. Let them take care to protect themselves from the perpetration of frauds. They need no guardians. They are able, and better able than Congress, to create every kind of political machinery which human prudence can contrive, for circumventing fraud, and preserving their true voice and vote in the Presidential election.

In my judgment, the evidence proposed cannot be received.

Then, as to the alleged ineligibility of the candidates. First, their alleged ineligibility under the laws of the State, I think we have nothing to do with. It has been imposed for local reasons of State policy, but if

the State sees fit to waive its own regulations on this subject it is her own concern. If the State declares that no person shall hold two offices, or that all officers shall possess an estate of the value of a thousand dollars, or imposes any other qualification, or disqualification, it is for the State to execute its own laws in this behalf. At all events, if persons are appointed electors without having the qualifications, or having the disqualifications, and they execute the function of casting their votes, their acts cannot be revised here.

Two of the electors, however, Levisee and Brewster, are alleged to have held offices of trust and profit under the United States, when the election was held on the 7th of November. It is not alleged that they did so on the 6th of December, when they gave their votes. Being absent when the electoral college met, their places were declared vacant, and the college itself proceeded to re-appoint them under the law, and sent for them. They then appeared and took their seats. So that, in point of fact, the objection does not meet the case, unless their being federal office-holders at the time of the election affects it.

Though not necessary to the decision of this case, I have re-examined the question of Constitutional ineligibility since the Florida case was disposed of, and must say that I am not entirely satisfied with the conclusion to which I then came, namely, that if a disqualified elector casts his vote when disqualified, the objection cannot be taken. I still think that this disqualification at the time of his election is not material, if such disqualification ceases before he acts as an elector. But, as at present advised, I am inclined to the opinion that if constitutionally disqualified when he casts his vote, such vote ought not to be counted.

I still think, as I thought in discussing the Florida case, that the form of the Constitutional prohibition is not material; that it is all one, whether the prohibition is that a federal officer shall not *be* an elector, or, that he shall not be *appointed* an elector. The spirit and object of the prohibition is, to make office-holding under the Federal Government a disqualification. That is all. And this is the more apparent when we recollect the reasons for it. When the Constitution was framed, the great object in creating the office of electors to elect the President and Vice-President, was to remove this great duty as far as possible from the influence of popular passion and prejudice, and to place it in the hands of men of wisdom and discretion, having a knowledge of public affairs and public men. The idea was that they were to act with freedom and independence. The jealousy which was manifested in the convention, against the apprehended influence and power of the general Government, and especially of the legislative branch, induced the prohibition in question. It was feared that the members of the Houses of Congress and persons holding office under the Government would be peculiarly subject to these influences in exercising the power of voting for Chief Magistrate. It was not in the process of appointment that this influence was dreaded; but in the effect that it would have on the elector himself in giving his vote.

It seems to me, therefore, that if a person appointed an elector has no official connection with the Federal Government when he gives his vote, such vote cannot be justly excepted to. And that substantial effect is given to the Constitutional disqualification if the electoral vote given by such officer is rejected. And my present impression is that it should be rejected.

Circumstances, it is true, have greatly changed since the Constitution was adopted. Instead of electors being, as it was supposed they would be, invested with power to act on the dictates of their own judgment and discretion in choosing a President, they have come to be mere puppets, elected to express the preordained will of the political party that elects them. The matter of ineligibility has come to be really a matter of no importance, except as it still stands in the Constitution, and is to be interpreted as it was understood when the Constitution was adopted. Hence, we must ascertain, if we can, what was its original design and meaning, without attempting to stretch or enlarge its force.

[It may be proper that I should here add, that I concede that there is great force in what is urged by other members of the Commission, respecting the difficulty which still remains, of the two Houses, when assembled to count the votes, undertaking an investigation of facts to determine a question of ineligibility, which might be extended in such a manner as materially to interfere with the main duty for which they assemble. This was probably seen when the law of 1800 was proposed for the purpose of having such matters determined by a grand committee preparatory to the meeting of the two Houses in joint convention. The passage of some law regulating the matter is on all accounts desirable.]

### III.—THE OREGON CASE.

The laws of Oregon do not provide for a Board of State Canvassers, but direct as follows:

> It shall be the duty of the Secretary of State, in presence of the Governor, to proceed within thirty days after the election, and sooner, if the returns be all received, to canvass the votes given for Secretary and Treasurer of State, State printer, Justices of the Supreme Court, members of Congress and district attorneys.

And then, with regard to State officers, directs: "The Governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person."

But with regard to Presidential electors, it directs: "The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of Congress. The Secretary of State shall prepare two lists of the names of the electors elected, and affix the seal of the State to the same. Such lists shall be signed by the Governor and Secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December."

When the electors are met on the day for casting their votes, the law directs: "If there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill, by viva voce and plurality of votes, such vacancy in the electoral college."

Watts, one of the electors having the highest number of votes, was a postmaster at the time of the election, November 7, 1876; but resigned that office during the month.

On the 4th of December, the Secretary of State, in presence of the Governor, canvassed the votes for Presidential electors, made a statement of the result, authenticated it under the seal of the State, and filed it in his office. The following is a copy of this document:

ABSTRACT OF VOTES CAST AT THE PRESIDENTIAL ELECTION HELD IN THE STATE OF OREGON NOVEMBER 7, 1876, FOR PRESIDENTIAL ELECTORS.

| Counties. | W. H. Odell. | J. W. Watts. | J. C. Cartwright. | Henry Klippel. | E. A. Cronin. | W. H. Laswell. | D. Clark. | F. Sutherland. | B. Carl. |
|---|---|---|---|---|---|---|---|---|---|
| Baker | 318 | 319 | 319 | 549 | 550 | 549 | 1 | 1 | 1 |
| Benton | 615 | 615 | 615 | 567 | 567 | 567 | 77 | 77 | 77 |
| Clackamas | 949 | 950 | 950 | 724 | 724 | 724 | 17 | 17 | 17 |
| Clatsop | 432 | 432 | 432 | 386 | 385 | 386 | ..... | ..... | ..... |
| Columbia | 157 | 156 | 157 | 179 | 179 | 179 | 22 | 22 | 22 |
| Coos | 571 | 571 | 571 | 512 | 516 | 515 | ..... | ..... | ..... |
| Curry | 131 | 131 | 131 | 124 | 124 | 124 | 3 | 3 | 3 |
| Douglas | 1,002 | 1,002 | 1,003 | 847 | 847 | 847 | 43 | 43 | 43 |
| Grant | 315 | 314 | 316 | 279 | 279 | 277 | 3 | 3 | 3 |
| Jackson | 585 | 585 | 586 | 827 | 840 | 840 | 5 | 5 | 5 |
| Josephine | 209 | 209 | 209 | 252 | 252 | 252 | 4 | 4 | 4 |
| Lane | 949 | 949 | 949 | 946 | 946 | 946 | 33 | 33 | 33 |
| Lake | 173 | 173 | 173 | 258 | 258 | 258 | ..... | ..... | ..... |
| Linn | 1,323 | 1,324 | 1,323 | 1,404 | 1,404 | 1,404 | 140 | 141 | 140 |
| Marion | 1,780 | 1,782 | 1,781 | 1,154 | 1,154 | 1,155 | 24 | 23 | 22 |
| Multnomah | 2,124 | 2,122 | 2,122 | 1,525 | 1,528 | 1,525 | 2 | 2 | 2 |
| Polk | 607 | 608 | 608 | 542 | 542 | 542 | 54 | 55 | 54 |
| Tillamook | 119 | 119 | 119 | 76 | 76 | 76 | 1 | 1 | 1 |
| Umatilla | 486 | 486 | 486 | 742 | 742 | 742 | 42 | 42 | 42 |
| Union | 366 | 366 | 366 | 525 | 525 | 525 | 32 | 32 | 32 |
| Wasco | 491 | 491 | 493 | 621 | 621 | 619 | ..... | ..... | ..... |
| Washington | 693 | 692 | 693 | 423 | 424 | 423 | ..... | ..... | ..... |
| Yamhill | 811 | 810 | 812 | 674 | 674 | 674 | 6 | 6 | 6 |
| Total | 15,206 | 15,206 | 15,214 | 14,136 | 14,157 | 14,149 | 509 | 510 | 507 |

Simpson, 1; Gray, 1; Saulsbury, 1; McDowell, 1.

SALEM, STATE OF OREGON:

I hereby certify that the foregoing tabulated statement is the result of the vote cast for Presidential electors at a general election held in and for the State of Oregon on the 7th day of November, A. D. 1876, as opened and canvassed in the presence of his excellency, L. F. GROVER, Governor of said State, according to law, on the 4th day of December, A. D. 1876, at 2 o'clock P. M. of that day, by the Secretary of State.

[SEAL.] S. F. CHADWICK,

*Secretary of State of Oregon.*

The statute of Oregon declares: "In all elections in this State the person having the highest number of votes for any office shall be deemed to have been elected."

On the 6th of December, when the electors met to give their votes for President and Vice-President, Watts resigned as elector, and was re-appointed by Odell and Cartwright to fill the vacancy. The Governor refused them the usual certificate, but certified that Odell, Cartwright and Cronin received the highest number of votes cast for persons *eligible* under the Constitution of the United States, and declared them duly elected. As Odell and Cartwright refused to meet with Cronin, he assumed to fill two vacancies. This proceeding of the Governor and Cronin raised the principal question in the Oregon case.

FEBRUARY 23, 1877.

JUSTICE BRADLEY:—

This case differs from the two cases already heard in this: By the laws of both Florida and Louisiana, the final determination of the result of the election was to be made by a board of canvassers invested with power to judge of the local returns and to reject them for certain causes assigned. In Oregon, no such board exists. The general canvass for the State is directed to be made by the Secretary of State in presence of the Governor, from the abstracts sent to him by the County Clerks. This canvass having been made, the result is declared by the law. The canvass is the last act by which the election is decided and determined. This canvass was made in the present case on the 4th day of December (1876); the result

was recorded in a statement in writing made by the Secretary and filed by him in his office. This statement or abstract thus became the record evidence of the canvass. It remains in the Secretary's office to-day, as the final evidence and determination of the result.

We have before us, under the great seal of the State, a copy of this statement, which shows the result to have been a clear plurality of over a thousand votes in favor of the three electors, Odell, Cartwright and Watts; and there is added thereto a list of the votes.

This document, after exhibiting a tabulated statement of the votes given for each candidate in each county of the State, footing up for Odell, 15,206; Watts, 15,206; Cartwright, 15,214; Klippel, 14,136; Cronin, 14,157; Laswell, 14,149, and a few scattering votes, was certified and authenticated at the end, as follows:

SALEM, STATE OF OREGON:

I hereby certify that the foregoing tabulated statement is the result of the vote cast for Presidential electors at a general election, held in and for the State of Oregon on the 7th day of November A. D. 1876, as opened and canvassed in the presence of his excellency, L. F. GROVER, Governor of said State, according to law, on the 4th day of December, A. D. 1876, at 2 o'clock P. M. of that day, by the Secretary of State.

[SEAL.] S. F. CHADWICK,
*Secretary of State of Oregon.*

This document, with this certificate and authentication upon it, was filed by the Secretary in his office on the 4th day of December.

To the exemplified copy of it, which was sent to the President of the Senate (and which we have before us), is added another document, entitled "List of votes cast at an election for electors of President and

Vice-President of the United States in the State of Oregon, held on the 7th day of November, 1876," which contains the votes given for each candidate (the same as in the canvass) written out in words at length, and certified by the Secretary of State, also under the great seal of the State, to be the entire vote cast for each and all persons for the office of electors as appears by the returns of said election on file in his office.

Having made this canvass, recorded it, and filed it in his office, the Secretary of State was *functus officio* with regard to the duty of ascertaining the result of the election. He could not change it; he could not tamper with it in any way. By his act, and by this record of his act, the ascertainment of the election in Oregon was closed. Its laws give no revisory power to any other functionary; and give none to the Secretary himself. And this, as we have seen, was done and completed on the 4th day of December, at 2 o'clock in the afternoon, in the presence of the Governor, according to the law of Oregon.

Now, what is the decree of the law on this transaction? It is clear and unmistakable. "In all elections in this State the person having the highest number of votes for any office shall be deemed to be elected." It is not left for any functionary to say that any other person shall be deemed to be elected. No discretion, no power of revision is given to any one, except as the general law of the State has given to the judicial department power to investigate the right of persons elected to hold the offices to which they have been elected.

Now, what is the next step to performed? It is this: "The Secretary of State shall prepare two lists

of the names of the electors elected, and affix the seal of the State to the same. Such lists shall be signed by the Governor and Secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December." This direction seems to be intended as a compliance with the act of Congress of 1792. It is true, that this act requires three lists instead of two to be delivered to the electors; but the number required by the State law was probably an inadvertence. Be this, however, as it may; what names was the Secretary required by law to insert in his certificate?

He made out his certificate on the 6th day of December, two days after his canvass had been completed, recorded, and deposited in the public archives. In making this certificate he was performing a mere ministerial duty. It was his clear duty to insert in his certificate the names of the persons whom the law declared to be elected. Doing otherwise was not only a clear violation of duty, but he made a statement untrue in fact; and the Governor putting his name to the certificate, joined in that misrepresentation. It may not have been an intended misrepresentation, and the use of the word "eligible" may have been thought a sufficient qualification; nevertheless it was a misrepresentation in fact and in law, and it all appears from the record itself. It needs no extrinsic evidence.

But it is said that the Governor has the power to disregard the canvass, and to reject an elector whom he is satisfied is ineligible. There is no law of Oregon which gives him this power. In my judgment, it was a clear act of usurpation. It was tampering with an election which the law had declared to be closed and ascertained.

It is said, however, that he may refuse a commission to an ineligible person elected to a State office. If so, it does not decide this case. And it seems to me that such an act, even with regard to State officers, would be an encroachment on the judicial power. A case is referred to as having been decided in Oregon, in which the appointment by the Governor to fill a vacancy in a State office caused by the incumbent being appointed to a United States office, was sustained. But surely the judgment in that case must have been based on the fact that there was a vacancy and not on the fact that the Governor assumed to judge whether there was a vacancy or not. His executive act, whether in determining his own action he had the right to decide the question of eligibility or not, was valid or not according as the very truth of the fact was.

But in the case before us he had a mere ministerial act to perform. He had no discretionary power.

If anyone could have taken notice of the question of supposed ineligibility it was the Secretary of State when making his canvass. Had he taken it upon himself to throw out the votes given for Watts, he would have had a much more plausible ground of justification for his act than the Governor had, to whom no power is given on the subject.

But it is said, no matter whether the Governor and Secretary acted right or wrong; they were the functionaries designated for giving final expression to the will of the State, and their certificate must be received as such, under the decision in the cases of Florida and Louisiana. To this view, however, there is a conclusive answer. As I said before, the certificate to be

given by the Secretary and Governor to these electors was not intended as any part of the machinery for ascertaining the result of the election; but as a mere certificate of the fact of election, as a credential to be used by the electors in acting as such and transmitting their votes to the President of the Senate of the United States, as required by the act of Congress of 1792. As such it is *prima facie* evidence, it is true; but no person has contended that it cannot be contradicted and shown to be untrue, especially by evidence of equal dignity. We did not so decide in the other cases. We held that the final decision of the canvass by the tribunal or authority constituted for that purpose could not be revoked by the two Houses of Congress, by going into evidence behind their action and return.

The only remaining question is, whether there was a vacancy in the college at the time when Odell and Cartwright assumed to fill a vacancy on the 6th day of December, 1876. It seems to me, that there was, whether there was a failure to elect on account of the ineligibility of Watts, or on account of his resignation afterwards.

It is agreed by a large majority of the Commission, that Cronin was not elected. Some of this majority take the ground that Watts was duly elected, whatever effect his ineligibility, had it continued, might have had on his vote. Others of them take the ground that there was no election of a third elector. It seems to me that it makes no difference in this case which of these views is the correct one; there was a clear vacancy in either case.

The act of Congress of 1845 declares that "each

State may by law provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote"; and also, "that whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."

The first contingency would occur when some of the electors were elected and could meet and fill any vacancy in their number. The second contingency would occur when no electors were appointed, and, therefore, no meeting could be held. It is evident that these are two very different cases; and that the one before us does not belong to the latter, but to the ormer. It is the difference between a college which is not full, and no college at all. In Oregon, according to the exigency supposed, the case belonged to that of a vacancy under the act of 1845.

The act of Oregon in relation to vacancies in the electoral college was evidently passed in view of the act of Congress upon which it was based; and its terms are so broad and comprehensive that I cannot doubt that it was intended to apply to every case of vacancy. The words are that "if there shall be *any* vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend, *or otherwise*, the electors present shall immediately proceed to fill," etc. This clearly covers every supposable case, and must be intended to be as broad as the corresponding section of the act of Congress. It is more general in its terms than the act relating to vacancies in State offices, which specifies only certain classes of cases.

As the electors Odell and Cartwright filled the vacancy in a regular manner, I cannot avoid the conclusion that they, together with Watts, were the true electors for the State of Oregon on the 6th day of December, and that their votes ought to be counted.

Their credentials are not signed by the Governor, it is true; but that is not an essential thing; and was not their fault. They have presented the records of the State found in its archives; and these show that the act of the Governor was grossly wrong; and they have also presented the certificate of the Secretary of State under the great seal of the State, conclusively showing their election. They have also shown by their own affidavit, that they applied to the Governor for his certificate and that he refused it. I think their credentials, under the circumstances, are sufficient.

It is urged that the distinction made between this case, and that of Florida and Louisiana is technical and will not give public satisfaction. My belief is that when the public come to understand (as they will do in time) that the decision come to is founded on the Constitution and the laws, they will be better satisfied than if we should attempt to follow the clamor of the hour. The sober second thought of the people of this country is in general correct. But, whilst the public satisfaction is always desirable, it is a poor method of ascertaining the law and the truth, to be alert in ascertaining what are the supposed wishes of the public. And as to deciding the case on technicalities, I do not know that technicalities are invoked on the one side more than on the other. In drawing the true boundary line between conflicting jurisdictions and establishing certain rules for just decision in such cases

as these, it is impossible to avoid a close and searching scrutiny of written constitutions and laws. The weight due to words and phrases has to be observed, as well as the general spirit and policy of public documents. Careful and exact inquiry becomes a necessity. And in such a close political canvass as this, in which the decision of a Presidential election may depend not only on a single electoral, but a single individual vote, the greatest strain is brought to bear on every part of our Constitutional machinery, and it is impossible to avoid a close examination of every part. There is a natural fondness for solving every doubt on some "broad and general view" of the subject in hand. "Broad and general views" when entirely sound, and clearly applicable, are undoubtedly to be preferred; but it is extremely easy to adopt broad and general views that will, if adhered to, carry us into regions of error and absurdity. The only rule that is always and under all circumstances reliable is to ascertain, at whatever cost of care and pains, the true and exact commands of the Constitution and the laws, and implicitly to obey them.

## IV.—SOUTH CAROLINA CASE.

It is not pretended that the votes of the Tilden electors as presented in certificate No. 2, in this case, are legal. The entire controversy arises upon the objections to certificate No. 1, containing the votes for Hayes and Wheeler.

These objections are—

FIRST.—That the November election in South Carolina was void because the legislature of that State has never passed a registration law as required by the constitution of the State, Article VIII., Section 3, which is as follows: "It shall be the duty of the general assembly to provide from time to time for the registration of all electors." This constitution was passed in 1868, and from that time to this, elections have been held, and the various elective officers of the State, as well as the office of Representatives in Congress, have been filled without a registration law having been passed. If the effect of the omission has been to render all these elections absolutely void, South Carolina has, for some years, been without any lawful government. But if the effect has only been to render the elections voidable, without affecting the validity of the acts of the government in its various departments, as a government *de facto*, then the election of Presidential electors and their giving their votes, have the same validity as all other political acts of that body politic. But, in my opinion, the clause of the constitution in question is only directory, and cannot affect the validity of elections in the State, much less the official acts of the officers elected. The passage of a registration law

was a legislative duty which the members on their oaths were bound to perform. But their neglect to perform it ought not to prejudice the people of the State.

The objection that it does not appear by the certificate that the electors voted by ballot, or that they took an oath of office as required of all officers in South Carolina are so formal and manifestly frivolous, that I shall not discuss them. The presumption is that all due formalities were complied with.

The only objections of any weight are those which charge that there was such anarchy and disturbance in the State during the elections, and such interference of United States troops and others therewith, that no valid election was held in the State, and it is impossible to know what the will of the State was. This is placing the objections and the offer of proof to support them, in their strongest light.

I think it is unquestionably true, that such a state of things as the objection contemplates ought to exclude any vote purporting to come from the State; for no such vote can be regarded as expressing the will of the State. But that is not the only question to be considered.

The first and great question is, as to the Constitutional power of the two Houses of Congress, when assembled to count the votes for President and Vice-President, to institute an investigation by evidence such as is necessary to determine the facts to be proved. This power of canvassing the electoral votes is constantly confounded with that of canvassing the votes by which the electors themselves were elected—a canvass with which Congress has nothing to do.

This belongs to the jurisdiction of the States themselves, and not to Congress. All that Congress has to do with the subject is, to ascertain whether the State has, or has not, appointed electors—an act of the State which can only be performed by and through its own constituted authorities.

It seems to be also constantly overlooked or forgotten, that the two Houses, in their capacity of a convention for counting the electoral votes, have only a special and limited jurisdiction. They are not at all invested with that vast and indefinite power of inquisition which they enjoy as legislative bodies. Until met for the specific purpose of the count, they have no power over the subject, except to pass such laws as it is competent for the legislative branch of the Government to pass. The electoral votes are in sealed packages, over which the two Houses have no control. They have not, constitutionally, any knowledge of these until they are opened in their presence. Their jurisdiction over the subject of the count, and the votes and the appointment of electors, commences at that moment. They have no power before this to make investigations affecting the count. Could it have been in the contemplation of the Constitution that the two Houses, after commencing the count, should institute such an investigation as the objectors propose—involving (as it would be likely to do) many weeks in the process? It seems to me impossible to come to such a conclusion.

When the state of things in a State is of such a public character as to be within the judicial knowledge of the two Houses, of course, they may take notice of it, and act accordingly—as was done in the times of

secession and the late civil war—or as might have been done at any time, so long as the seceding States were not in harmonious relations with the general Government. But when a State is in the enjoyment of all those relations, when it is represented in both Houses of Congress, is recognized by the other departments of the Government, and is known to have a government republican in form—in other words, when all the public relations of the State are the same as those of all the other States, how can the two Houses in convention assembled (and assembled for such special purpose), go into an investigation for the purpose of ascertaining the exact state of things within the State, so as to decide the question (perhaps a very nice question to be decided), whether the tumults and disorders existing therein at the time of the election, or the presence of the troops sent there by the President for the preservation of the public peace, had such an influence as to deprive the State of its autonomy and the power of expressing its will in the appointment of electors? Such an investigation, or one of any such character and extent, was surely never contemplated to be made whilst the votes were being counted.

That South Carolina is a State, and that she has a republican form of government, are public facts of which the two Houses (and we in their stead) must take judicial notice. We know that she is such a State. That she is capable of preserving the public order, either with or without the aid of the federal authority; and that the executive interference, if made at all, was made in the exercise of his proper authority, for the reasons set forth in his public proclamations and orders, are facts to be presumed. At all events, the

two Houses, under their special authority to count the electoral votes, are not competent to take evidence to prove the contrary.

I do not doubt that Congress, in its legislative capacity, with the President concurring, or by a two-thirds vote after his veto, could pass a law by which investigation might be had in advance, under proper regulations as to notice and evidence and the cross-examination of witnesses; the results of which could be laid before the two Houses at their meeting for the count of votes, and could be used by them as a basis for deciding whether such a condition of anarchy, disturbance and intimidation existed in a State at the time of the election of its electors, as to render its vote nugatory, and liable to be rejected. But without the existence of a law of this sort, it is, in my judgment, impracticable and unconstitutional for the two Houses to attempt the decision of such a question. The investigations made by legislative committees, in the loose manner in which they are usually made, are not only not adapted to the proper ascertainment of the truth for such a purpose, but are totally unauthorized by the Constitution. As methods of inquiry for ordinary legislative purposes, or for the purpose of laying the foundation of resolutions for bringing in an impeachment of the President for unconstitutional interference, of course they are competent; but not for the purpose of receiving or rejecting the vote of a State for the Presidential office. They are not made such by any Constitutional provision or by any law. Legislation may be based on the private knowledge of members, and a resolution to bring in an impeachment may rest on *ex-parte* affidavits or on general informa-

tion; and, therefore, the evidence taken by a committee cannot be decreed incompetent for such a purpose; but is often of great service in giving information to the Houses as legislative bodies, and to the House of Representatives as the grand inquest of the nation. But the decision to receive or reject the vote of a State, is a final decision on the right of the State in that behalf, and one of a most solemn and delicate nature; and cannot properly be based on the depositions of witnesses gathered in the drag-net of a Consional committee.

For these reasons I am clear that the evidence offered in support of the objections made to the electoral votes of South Carolina cannot be received.

These are, in brief, the views which I entertain in reference to this case; and under them, I am forced to the conclusion that the objections made to the votes given by the electors certified by the Governor of the State, and the evidence offered in support of the same, are insufficient; and that the said votes ought to be counted.

# ELECTORAL COMMISSION.

Mr. Black's article in the *North American Review* on the Electoral Commission of 1877 is pervaded by an entire disregard of two fundamental truths, which furnish a complete answer to his argument. The first is, that the United States is a government of law and not a democracy. The second is, that the several States, and not the general Government, have the appointment of electors of President and Vice-President, and are the sole judges of their appointment.

Mr. Black assumes that the popular vote was in favor of Tilden and Hendricks and against Hayes and Wheeler. Conceding that this may have been true, yet if a majority of the electors were in favor of Hayes and Wheeler, the latter were constitutionally elected.

If the United States were a pure democracy, the mere count of hands would decide all questions absolutely, without regard to the wisdom or justice of the decision. It would make laws as well as elect officers. It would be an absolute test of civil right and wrong, and, of course, what *is* right and wrong would depend on the absolute truth of the count. If the vote of one Louisiana negro, or of one New York rough, were omitted, it might wholly turn the scale. The discovery of such an omission at any time would change the result. A law might stand for a year and

then be subverted; a President might act as such for three years, and then be unseated on the discovery of the supposed mistake. Such discovery, it is true, would depend on human testimony, which is sometimes fallible and sometimes corrupt; no matter for that, as it is the only guide, the consequence must follow. The principles of pure democracy would demand it.

A government regulated by law is conducted on different principles. Under such a government a matter sometimes becomes settled. If a court of last resort decides a controversy the decision stands. If an election is held and decided according to law, there is an end of the matter. In the one case, as in the other, mistakes may be made in fact. But the law does not tolerate a change. It deems certainty, security and peace preferable to eternal contention. It regards some things as settled and not to be disturbed. It provides all reasonable opportunities of scrutiny and review, but imposes an end to controversy somewhere. It recognizes fallibility and mistake to a certain extent, but beyond all that, demands that its decisions shall be accepted as infallible.

Again, in gathering up the results of the public will, it proceeds by rules adopted and laid down beforehand. These rules are regarded as wholesome restraints on faction, and on corrupt influences of all kinds. To carry out these rules, it appoints public agents, officers and tribunals. Their action, subject to regular processes of correction (which are also prescribed) are received as definitive. With all its imperfections, this system is regarded better than anarchy, which would follow the want of it.

It cannot be doubted that the division of a State into small constituencies, each acquainted with its own wants and its own men, is a wise feature in a constitution. These constituencies often choose a different majority of representatives from that which would be chosen by a general vote of the whole population. The State of New York has one hundred and twenty-eight legislative districts, each entitled to a representative. A majority of these constituencies may be republican, whilst a majority of all the voters in the State may be democratic. This would arise from a large body of democratic voters being crowded into a locality—say the City of New York. Still the arrangement of constituencies is a wise one, though an artificial one. There is no reason to suppose that the State would be any better governed if the Irish vote of the city should control the policy of the whole State, than it would if the majority of the constituencies controlled it.

Our whole governmental system is an artificial one, regulated and controlled by law; and it is this very feature of our government which secures public safety and order, and which, if anything can, will give perpetuity to our republican institutions. It is not the roar of mere numbers, but the still, strong voice of an organized community, which expresses the power, the wisdom and the dignity of a people.

STOWE, 1877.

## Reply to Charges as to Conduct as Member of Electoral Commission.

[*Newark Daily Advertiser*, Wednesday Evening, September 5, 1877.]

### JUSTICE BRADLEY SPEAKS.

We have just received the following prompt and manly letter from Mr. Justice Bradley, which so fully and completely explains itself that it needs no further comment. It comes from his summer retreat at Stowe, Vt., and though no vindication of his course in the Electoral Commission, of which he was the most conspicuous member, seemed called for by those who were familiar with all the facts, yet the injustice of the rumor that has recently been circulated, has prompted him to stamp it as basely false, and he does so with an emphasis of conscious rectitude that leaves no ground for mistake. His statement confirms what we took occasion to say on authority of almost equal responsibility as his own.

Stowe, Vt., Sept. 2, 1877.

Editor of the *Advertiser*:—I perceive that the New York *Sun* has reiterated its charge that after preparing a written opinion in favor of the Tilden electors in the Florida case, submitted to the Electoral Commission, I changed my views during the night preceding the vote, in consequence of pressure brought to bear upon me by Republican politicians and Pacific Railroad men, whose carriages, it is said, surrounded my house during the evening. This, I believe, is the important point of the charge. Whether I wrote one opinion, or twenty, in my private examination of the

subject, is of little consequence, and of no concern to anybody, if the opinion which I finally gave was the fair result of my deliberations, without influence from outside parties. The above slander was published some time since, but I never saw it until recently, and deemed it too absurd to need refutation. But as it is categorically repeated, perhaps I ought to notice it. The same story about carriages of leading Republicans, and others, congregating at my house, was circulated at Washington at the same time, and came to the ears of my family, only to raise a smile of contempt. The whole thing is a falsehood. Not a single visitor called at my house that evening; and during the whole sitting of the Commission, I had no private discussion whatever on the subjects at issue with any person interested on the Republican side, and but very few words with any person. Indeed, I sedulously sought to avoid all discussion outside the Commission itself. The allegation that I read an opinion to Judges Clifford and Field is entirely untrue. I read no opinion to either of them, and have no recollection of expressing any. If I did, it could only have been suggestively, or in a hypothetical manner, and not intended as a committal of my final judgment or action. The question was one of grave importance, and, to me, of much difficulty and embarrassment. I earnestly endeavored to come to a right decision, free from all political or other extraneous considerations. In my private examination of the principal question (about going behind the returns), I wrote and re-wrote the arguments and considerations on both sides as they occurred to me, sometimes being inclined to one view of the subject, and sometimes to the other. But

finally I threw aside these lucubrations, and, as you have rightly stated, wrote out the short opinion which I read in the Florida case during the sitting of the Commission. This opinion expresses the honest conclusion to which I had arrived, and which, after a full consideration of the whole matter, seemed to me the only satisfactory solution of the question. And I may add, that the more I have reflected on it since, the more satisfied have I become that it was right. At all events, it was the result of my own reflections and consideration, without any suggestion from any quarter, except the arguments adduced by counsel in the public discussion, and by the members of the Commission in its private consultations.

As for the insinuations contained in a recent article, published in a prominent periodical by a noted politician,* implying that the case was decided in consequence of a political conspiracy, I can only say (and from the peculiar position I occupied on the Commission I am able positively to say) that it is utterly devoid of truth, at least, so far as the action of the Commission itself was concerned. In that article the writer couples my name with the names of those whom he supposes obnoxious to public odium. The decencies of public expression, if nothing more, might well have deterred so able a writer from making imputations which he did not know to be well founded.

Yours respectfully,

(Signed) JOSEPH P. BRADLEY.

* Judge Jeremiah S. Black.

## ELECTORAL COMMISSION.

The abuse heaped upon me by the Democratic press, and especially the New York *Sun*, for the part I took in the Electoral Commission, appointed to decide the controverted questions which arose upon the Presidential election of 1876–7, is almost beyond conception. Malignant falsehoods of the most aggravated character were constantly published. I bore these things in silence until it was stated that Judge Field had said, in conversation, that I had changed my mind during the sitting of the Commission, and that I had first written an opinion in favor of Tilden, and had read it to him and Judge Clifford. When this story appeared the Judge was in California and I was spending my vacation at Stowe, Vt. I immediately wrote to him, calling his attention to these charges. He replied, denying that he used the expressions attributed to him, and had said nothing derogatory to my honor or integrity.

# LAW,

ITS

# NATURE AND OFFICE

AS THE

# BOND AND BASIS OF CIVIL SOCIETY.

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INTRODUCTORY LECTURE

TO THE

Law Department of the University of Pennsylvania,

WEDNESDAY, OCTOBER 1ST, 1884,

BY

JOSEPH P. BRADLEY,

Justice of the Supreme Court of the United States.

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Quare quum lex sit civilis societatis vinculum, jus autem legis aequale, quo jure societas civium teneri potest, quum par non sit condicio civium? . . . Quid est enim civitas nisi juris societas?—Cic. de Repub. I. 32.

PHILADELPHIA, October 11, 1884.

Hon. JOSEPH P. BRADLEY.

DEAR SIR:—The committee appointed for that purpose by the Students of the Law Department of the University of Pennsylvania, wish to express to you their appreciation of the address delivered before them on the 1st instant, and also to respectfully request that you will lend to them your manuscript in order that it may be printed. Hoping that you will give this request a favorable consideration, we are,

Very respectfully yours,

JOSEPH S. CLARK, *Chairman*,
LUKE D. BECHTEL,
GEORGE H. CHESTERMAN,
F. S. PHILLIPS,
HENRY C. TODD,
*Committee.*

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WASHINGTON, October 13, 1884.

GENTLEMEN:

I have duly received your kind letter written as a committee of the Students of the Law Department of the University of Pennsylvania, asking for a copy, for publication, of the lecture delivered by me before them on the 1st instant. Duly acknowledging this mark of their appreciation of the lecture, I would say that I have no desire to withhold it from publication, though it was not prepared under circumstances to render it fit for the test of criticism. In the hope, however, that its suggestions may lead the thoughtful to a fuller and more mature consideration of the subject discussed, I submit it to your disposal. With kind wishes for the success of yourselves and those whom you represent, in the study and pursuit of the noble profession you have chosen, I am,

Respectfully and truly yours,

JOSEPH P. BRADLEY.

Messrs. Joseph S. Clark, *Chm'n*, Luke D. Bechtel, George H. Chesterman, F. S. Phillips, Henry C. Todd, *Committee.*

## LECTURE.

YOUNG GENTLEMEN: An introductory lecture to a course of law is not unnaturally directed to a general view of the subject, its nature, the principles on which it is founded, its relations to other departments of knowledge, the proper methods of its study, and the aims which the student should have in view. To these heads, or some of them, I shall endeavor to direct your attention on this occasion.

First of all, we ought to have a clear conception of the subject itself—law—what it is, and what is its office and use in human affairs. Perhaps the imagination would be more impressed by picturing to ourselves the absence of law, than by attempting to describe its operation and effect. Suppose an omnipotent edict should presently go forth, abolishing all law; what would be the condition of things in this city? A would walk into B's banking house and take from his box or safe any amount of money that his fancy dictated, unless B, by superior strength, could protect his possesions. In like manner, C would enter D's store, and take such articles as he chose, unless D could prevent him by force. Your neighbor, being in want of books for his library, could take from yours whatever he needed, and any clothes from your wardrobe which might strike his fancy. The first bully you might meet on the sidewalk could strike you down with impunity, either for the purpose of indulging in sheer malice and wickedness, or of possessing himself of any valuables about your person. You might, at any moment, be turned out of house and home by a stronger person who fancied your luxurious and

elegant surroundings. There would be no such thing as property, or debts, or securities. Everything would lie in possession, and that would go to the strongest. Any association of good men, entered into for mutual protection, would be so far the establishment of law, and would be contrary to the supposed edict abolishing it. Society would be dissolved and ended. Society cannot exist without law. Law is the bond of society; that which makes it; that which preserves it and keeps it together. It is, in fact, the essence of civil society.

### DEFINITION OF LAW. WHAT IT IS.

And now that we see what law accomplishes, and what would be the effect of its abolition, we may proceed to a definition of it. Blackstone says that municipal or civil law is a rule of civil conduct, prescribed by the supreme power in a State, commanding what is right and prohibiting what is wrong. I would rather say that it is those rules and regulations which the inhabitants of a particular country or territory adopt and enforce for the establishment and maintenance of civil government, the preservation of social order, the distribution of justice, and the advancement of the general good; or, it is that body of rules which a political society enforces by physical power for the protection of its members, in their persons and property, and the promotion of their happiness. Whatsoever rule of conduct is not enforced by the physical power of society is not law. It may be a rule of morals, or of courtesy, or of honor; but it is not law. That conduct which the State requires of its citizens, or those within its jurisdiction (who are

*quasi* citizens for the time being), and which it regards as of sufficient consequence to enforce by its physical power, is civil conduct, and the rules by which it is prescribed constitute the law of that State. It matters not how it came to be the law, whether it was prescribed by an autocrat or a legislative body, or arose from mere custom and usage, or the decrees of the courts—if the physical power of society, that is, the State, is put forth for its vindication, it is law; if not, it is not law. Sometimes popular opposition to a law may prevent its execution and paralyze the power of the State. This produces, so far as it extends, a relaxation of the bonds of society and a return to a lawless condition, but as soon as the public power can be restored, the reign of law returns.

With the exception of omitting that distinguishing characteristic of law, its enforcement by the physical power of the State, Blackstone's definition may be logically correct. The law making power is necessarily the supreme power in a State; the rules it enforces are presumed to be known, and may therefore be said to be prescribed; and that they command what is right and prohibit what is wrong is a legal truism, though it is also true in a moral sense, inasmuch as the laws of a State are the final expression of the nation's sense of justice and political wisdom, developed from its history and experience, and formulated by its highest intelligence. So much, at least, may be said of the law, viewed in its most mundane and prosaic aspect, as practically exhibited in human affairs, without attempting to scale those sublime heights from which philosophy may take even a more ennobling view of the subject. Ulpian defines justice (or law in its

essence), as "*Constans et perpetua voluntas jus suum cuique tribuendi.*" And Richard Hooker, a writer of great power and elegance, sums up his conclusion on the subject as follows: "Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels and men, and creatures of what condition soever, though in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."

### GENERAL DIVISION OF LAW.

The law extends not only to the relations and conduct of individuals towards each other, but to the organization of society itself, its form of government, its public institutions and works, and even to the mutual relations between the State and other States. The different subjects to which it is thus extended renders its division natural into PUBLIC LAW and PRIVATE LAW; and that of public law into international law and Constitutional law.

The laws relating to crimes are generally regarded as public law; but it seems to me that they might properly be considered as belonging respectively to that branch of the laws, public or private, which is violated by the commission of the crimes. A man who takes my property may be a mere trespasser or a thief, according to the manner and intent with which he takes it, but it is equally a private injury to me; punishable in the one case by damages for the injury, and in the other by imprisonment or corporal chastisement,

with a return of the goods, if they can be found. The reason for calling the crime a public offence, committed against society itself, has always seemed to me too metaphysical. It is said that a crime, especially if it reaches the grade of felony, is a violation of the social compact, and tends to dissolve society; or that it is an insult to the majesty of the sovereign; but this is only in degree; every violation of law may be characterized in the same manner, and the statement would be true to a certain extent.

INTERNATIONAL LAW consists of those rules dictated by natural justice, by long usage, or by treaties, which form the law of intercourse between the State or nation, and other States or nations. Though international, it is enforced by each individual nation as its own law, there being no common judge to enforce it. And each nation, on its own responsibility, puts its own construction upon the law, at the risk of a conflict with other nations, if they should construe it differently. This law is to be found in the works of those sages of the law who have made international law their special study, and who have become generally recognized as authorities. They are sometimes called publicists, because international law is regarded as public law *par excellence*. Of this class are Grotius, Puffendorff Bynkershock, Vattel, Wheaton, Phillimore, and others.

There is a branch of international law, which is called private international law, which has respect to the rights and duties of persons who have relations personal, or by means of property or contract with different countries, whose laws conflict with each other in reference to the matter in hand; and it is the office of private international law to determine, accord-

ing to the principles of justice, what rule should be followed. Ordinarily every man's rights and duties are determined by the law of the place where he resides. But he may be the subject of some other sovereign claiming his allegiance, or he may own property located in another country, or he may have contracts made or to be performed there; and it is the province of private international law to determine his rights and duties in all these cases. The validity and effect which shall be accorded in one country to acts done in another, such as transferring property, recovering judgments, constituting executors, guardians, etc., is a matter of comity between the two countries and their tribunals; and private international law determines when this comity should be exercised. A number of eminent writers have treated of this subject, sometimes under the title of Conflict of Laws, and sometimes under that of Private International Law; such as Savigny, Story, and your own learned townsman, Mr. Wharton. Chancellor Kent, in his Commentaries, touches briefly, but with masterly precision, the subject of International Law in both of its aspects.

In this age, when the Atlantic Ocean has become a mere ferry, and foreign intercourse is so common, and in this country, where forty independent communities are so closely related by business connections of every kind, this branch of internationl law is of the greatest importance, and should be carefully studied by every American lawyer.

CONSTITUTIONAL LAW prescribes the form of government of a State, its general departments and their functions; the political divisions of its territory, and the duties and powers assigned to each; the various

kinds of delegates and officers to consult for the public good and execute the public will, and the modes of appointing them; in other words, the framework of civil society, and the functions of its several parts The Constitutional law of a country is sometimes written, sometimes unwritten, and sometimes partly the one and partly the other. In this country it is mostly written, partly in a direct and formal act of the people, under the name of a Constitution, and partly in organic laws passed by the legislature. The general grant of legislative power is deemed sufficient to authorize the legislative department to extend the organization of civil society to details which are not provided for in the outline drawn by the Constitution itself. Whatever law relates to a public function is Constitutional in its character, whether it defines the power of a governor or a constable, or directs the mode of passing laws or of exercising the elective franchise. It touches the organization of the body politic, and that organization is, subjectively, the Constitution of the State.

An appendix to Constitutional law, not generally regarded as belonging to it, though relating to the duties and powers of public functionaries, is ADMINISTRATIVE LAW, which presides over the establishment and execution of those public institutions and works which are created or carried on for the benefit and protection of society, such as armies, navies, fortresses, sea-walls, light-houses, harbors, piers, bridges, highways, railroads, canals, mails, prisons, hospitals, poor-houses, asylums, universities, schools, and benevolent corporations, all of which, when emanating from public authority (as they mostly do), exhibit the majesty of

the body politic in the energy of beneficent action, aiding, protecting and benefiting all its members and advancing human civilization. This subject is largely discussed by the French lawyers as a separate branch of public law, and some of their works are well worth the students' consideration. Ferriere's Treatise on Public and Administrative Law is a model of clear analysis, and is well worthy of being done into English, and studied in our legal institutions.

PRIVATE LAW consists of those civil rules and regulations which govern the private actions and mutual relations and dealings of all citizens, and of all other persons subject to the jurisdiction of the State. When we consider the innumerable relations and transactions which take place amongst men in society, it is apparent that the laws must necessarily be extensive and voluminous. In the simple times of old a few rules might have been sufficient, but in the present complex state of society, having so many industries, occupations and interests, and presenting so many phases of human life, all requiring the protection of the laws, it is indeed wonderful that the civil law can be so all-embracing and omnipresent as to reach and provide for every exigency that can arise. But it does this and does it perfectly. It does it by means of a rigid and accurate classification of human relations and acts—a classification based partly on nature, partly on custom, and partly on instituted or voluntary conditions. The most striking natural relations are those of husband and wife and parent and child; custom early established those of master and servant and guardian and ward, and that of magistrate and people grows out of the very construction of society.

But there are innumerable relations which men voluntarily or involuntarily assume towards each other, either by conduct or by contract. If one injures another in person, reputation or property, the relation of injurer and injured is established between them, imposing upon one the duty of satisfaction for the injury, and giving to the other the right to demand it. If two or more enter into a contract (permitted by the law) they mutually assume a contractual relation towards each other, binding each to the others, for the performance of his part of the contract, and a failure to perform involving the duty of satisfaction and the right to demand it. This is a mere general statement of what occurs every moment; but the variations of right and duty growing out of the infinite variety of facts and shades of difference in the many cases that occur, render the complicated mass of rules and principles necessary to meet and provide for all, forbidding to the beginner. He must learn well the great principles of justice, and the system of legal analysis and classification, and then light will begin to break in upon the chaos, and all things will at last become easy and plain.

### THE SUBJECT MATTER OF LAW, AND THE PLACE WHICH ITS STUDY OCCUPIES AMONG THE SCIENCES.

Having now described in a general way, what law is, and what are its objects and uses, and its general divisions, let us stop a moment and take a little more accurate survey of it as a whole, as a subject of learned study, and as to the place it holds amongst the other studies to which men devote themselves, particularly those of a professional character.

Every science, or branch of human knowledge, has a subject matter which it scrutinizes, studies, analyzes and expounds, as to its substance, its accidents, its relations, causes and effects, and the natural laws which govern its manifestations. The subject matter of mathematical science is number and figure; the subject matter of astronomy is the heavenly bodies, and it explores their nature, their appearances, their positions, their motions, and the relations which they have to each other; the subject matter of geology is the structure of the earth, which is explored in its various strata of rocks, their relative super-position and age, their composition and contents, the remains of ancient vegetable and animal life embedded in them, and the causes which have led to their production; the subject matter of natural philosophy is the mechanical forces of nature, and the phenomena which they produce; of botany, the vegetable kingdom; of natural history, the animal kingdom. Man himself forms a subject of profound study; his body, with its sustentation and preservation, forms the subject of physiology and medical science; his mind and its operations, form the subject of mental philosophy, including metaphysics; his language forms the subject of philology, grammar and rhetoric; his relations to his Maker, and the unseen world, including his moral relations to his fellow-men, form the subject of religion, or religious philosophy and ethics. All these subjects present vast and important fields of inquiry, worthy of profound study; but none of them exceeds in importance the subject matter of the science of law—CIVIL SOCIETY—that highest phase and outgrowth of humanity, without which men would be but savages;

without which, unless hedged about by divine influences in some garden of Eden, none of the sweet and beautiful manifestations of human life could possibly exist.

### CIVIL SOCIETY FORMED AND SUSTAINED BY LAW; WHICH IS ITS REAL OFFICE AND PURPOSE.

No doubt man is naturally a social being. Certain individuals, it is true, for the sake of wild freedom, or from some acquired disgust, may prefer to wander away from their fellows, and lead isolated lives; but take them as a race, men love company, and the mutual support and aid, sympathy, affection, and communication by language, which company gives. They possess, however, selfish passions, which are often fierce and ungovernable; and, under the most favorable circumstances in which they can be placed, society could not, for any length of time, be maintained on the voluntary principle, or under the influence of mere moral restraints. There must be government, there must be force, there must be a civil organization of some kind—that is, the organization of a *civitas* or State, wielding the concentrated power of the community. To this, if not naturally led by their instincts, men are compelled by necessity, as soon as they increase in numbers and possessions. They cannot separate. They must remain together, not only in obedience to their instincts of affection, communication and sympathy, but for their mutual protection against other bodies of men, who would otherwise drive them from their seats, or make them captives to their will. So that civil society is a necessity of our nature and of the conditions by which we are

surrounded. And this is the subject matter of our science, taken in its broadest sense. It is true that the political philosopher, the political economist, the statesman, and the legislator, as well as the lawyer, finds in civil society the subject of their studies and investigations; but what, after all, is the object of their studies, but to ascertain what are the best and most beneficial laws, and how the existing laws may be improved for better promoting human happiness? and what is this but taking a more lofty and extended view of the law itself? looking at it in reference to its objects and uses; and thereby comprehending more perfectly its spirit, its essence and its application? In other words, it shows us that the profound student of law can never feel satisfied with his acquirements in the science until he is able to take philosophic and statesmanlike views of the subject to which it relates—the order of civil society—and of its bearings on human happiness.

We see, then, that in approaching the study of the law we approach a subject of living interest and importance, independently of its attractions as a professional calling. It is not merely dead books, and their contents, that we set about to learn, but a living thing—civil society—in its organization and its rules, under all phases of human experience, human intercourse, human activity, and human interest.

The student of medicine examines with minutest care the subject matter of his science, namely, the human body; he scrutinizes it in all its parts; the functions of each part and its relations to the other parts; the things that effect it beneficially, and those that affect it hurtfully. It is his study from morning

to night to ascertain its functions, its needs, its dangers, its injuries, and the modes and means of repairing them. So the student of law, in order to obtain a profound conception of his science, must, in like manner, study deeply the subject matter of it—civil society—in its construction, its workings, its rules; in the solution of all questions of civil right or duty that arise in every situation in which a man can be placed, in every transaction in which he may be concerned; in the prescription of the proper remedy for the assertion of every right, and for the prevention or redress of every wrong. For the law is everywhere, and extends to everything of human interest.

At first view when we walk about amongst our fellow-men, we may not observe the omnipotent influence and controlling effect of the law. Its power is so subtle and all-pervading that everything seems to take place as the spontaneous result of existing conditions and circumstances. It is like gravitation in the natural world, which, whilst it governs and controls every movement, and produces all the order of the universe, is itself unseen. It must be studied in its effects in order to understand its power. So with law in civil society. It is over, under, in and around, every action, that takes place. Its silent reign is seen in the order preserved, the persons and property protected, the sense of security manifested; in the freedom of intercourse, in the cheerful performance of labor, in the confidence with which business is transacted, and trust is reposed by one man in another; in the peaceful and contented pursuit of trades and occupations, and the bestowal of services; all goes on cheerfully and smoothly, working out and interworking the constant

evolution of human happiness—BECAUSE OF the ever-existing (though generally unrecognized) consciousness of the presence, the watchfulness, and the all-sufficient protection of the law. In ordinary conduct, conformity to its rules and requirements is pursued almost as a second nature; but in transactions requiring authentic evidence, greater knowledge, perhaps professional skill, is required; and when questions of ambiguity, complexity and difficulty arise, which the parties themselves cannot amicably solve, then, of course, the skill of the lawyer, and perhaps the wisdom and authority of the judge, must be resorted to. But compared with the millions of transactions which take place, these ripples on the surface, do not often occur. The mighty river of things generally moves on with an undisturbed current; but only because it is kept in its banks and regulated in its course by the power of law.

### THE ANALYSIS OF CIVIL SOCIETY AND OF THE TRANSACTIONS THAT TAKE PLACE THEREIN, FURNISHES THE MOST PRACTICAL GROUND OF ANALYSIS OF THE LAWS.

Since law is the bond and basis of civil society, and the platform on which, and according to which, all civil transactions are conducted and regulated, it follows, that the only analytical division of the science which is practically useful is, and must be, largely based upon an analysis of civil society, the transactions that take place in it, and the relations of its various members to the whole and to each other.

Law itself, in its essence, cannot be analyzed; it is simply the dictates of justice in the varied circumstances and relations of life. Those circumstances

and relations may be analyzed and classified, and the dictates of justice in each case or class of cases may be ascertained and enunciated. In other words, not the law, but the subjects to which it is applied, are arranged into classes and under heads, and, having found the law applicable to each class or head, we speak as if we had analyzed the law itself.

Ulpian, the great Roman lawyer, said (as Cicero had, substantially, said before him), that the law itself has only three commands, "*honeste vivere, alterum non lædere, suum cuique tribuere;*" "live rightly, do no wrong to another, give to every one his own"; leaving it to be inferred that all the rest consists in the application of these fundamental principles to particular cases.

True, there are certain general rules and maxims of extensive application, each of which may furnish the subject of a chapter of law, showing how and in what cases and circumstances it is to be applied. Thus, the rule, "*sic utere tuo, ut non alienum laedas,*" is constantly applied to hundreds of cases which it would be tedious to enumerate, but the nature of which could be indicated by a few examples, such as this: If you conduct a stream on to your own land for the purpose of irrigation, you have no right to allow it to wet and injure the land of your neighbor lying below yours. The rule is a rule of justice and may be treated of under a head or chapter of its own. But a collection of such general rules or maxims would not present a scientific arrangement of the law. They would stand isolated from each other, without completeness or symmetry, or any proper relation to, or connection with each other. Several authors, as Noy,

Wyngate, Francis and Broom, have made collections of these maxims, and have commented upon them by showing the manner in which, and the kind of cases to which, they are severally applied; and these books are very useful in their way, and worthy of study; but they exhibit no analysis or arrangement of the law, or the science of law. To make such an analysis or arrangement, we must resort, as before stated, to the subject matter of the law, civil society and the various relations and transactions which it exhibits.

There is one general division, however, which runs through all the departments and branches of the law, which is not based on the subject matter, but rather on the nature of things; it is that which considers the law under the three heads of *Jura*, *Injuriæ*, *Remedia*—Rights, Injuries and Remedies. They might be considered together, for every injury is the violation of some right, and has its appropriate remedy, or choice of remedies. But there are many injuries, or wrongs, which are deprivations of mere negative rights, and the injuries themselves assume a distinctive and prominent importance, making it desirable to subject them to a separate consideration; such as most torts, including trespasses, assaults, libels, slander, etc. And, again, the remedies of the law have such a general similitude, and are governed by such peculiar regulations, that they need to be distinctly and separately considered.

Another division, independent of the subject matter, is that between law and equity—the latter being a particular modification of the law in many cases where its strict general rules would be inadequate to the purposes of justice. The system of rules and pro-

ceedings which are adopted by courts of equity for effecting the desired modification, is treated of separately from the general system of the law.

With these exceptions, and perhaps one or two others that have escaped me, the study and science of the law is divided and subdivided, according to the subjects to which it is applied, and these embrace all the transactions and relations of society.

In the consideration of rights the principle of analysis to which I have referred is at once rendered manifest. First comes the Constitution and order of the Commonwealth itself; then, proceeding to private law, we first take up the personal rights and duties of individuals, their status as free or servile, as husbands and wives, parents and children, guardian and ward, corporations, etc.; then comes up the consideration of property; and this we divide into, first, real or immovable, as land, and, second, personal, including chattels and contracts; and every contract furnishes a distinct head of law, so that we have the law of sale, of loan, of partnership, of bills of exchange, of promissory notes, of suretyship, of insurance, etc. And when we come to the department of injuries, or wrongs, we find it divided in like manner into many different heads, according to the nature of the wrong committed, each of which furnishes a distinct subject of investigation, and is treated of in separate books, as the law of libel, the law of slander, the law of assault and battery and trespass, the law of collisions, etc. In other words, we find (what, from the nature of law, as we have considered it, we should naturally expect to find) that the analysis of the laws is based upon an analysis of civil society, and the transactions which take place in it.

## IS THE KNOWLEDGE OF LAW, OR JURISPRUDENCE, A SCIENCE?

A question often mooted is whether law (meaning, of course, the knowledge of law, or jurisprudence) is a science. If it is a science, it must have some necessary and fixed principles, different from the mere arbitrary regulations of a despotic will, which may be one thing or another, according to the legislator's whim. The knowledge of such an accidental set of rules could certainly never be elevated to the dignity of science. And if law is of that arbitrary and empirical character, jurisprudence, or the knowledge of law, is clearly not a science. But law is not arbitrary and empirical any more than justice itself is so. Ulpian declares jurisprudence to be "*divinarum atque humanarum rerum notitia; justi atque injusti scientia.*"

## JURISPRUDENCE A SCIENCE, BECAUSE LAW IS A NATURAL OUTGROWTH OF HUMANITY, AND NOT A MERE ARBITRARY SET OF RULES.

In view of what has already been said with regard to the nature of law, it seems to me clear that it is one of the natural and inevitable outgrowths of humanity, like language, like the family relation, like clanship; I do not say like society, because society and law are so intimately connected that the hypothesis of one is the hypothesis of the other. Justice and right, like truth, are the same in all countries and amongst all peoples; and as law is the expression by any particular people of its sense of justice, it must have a natural law of origin and growth, similar in all States. Civil society is substantially the same

thing in all countries, and law being the basis and exponent of civil society, must exhibit substantially the same general principles and the same features in all States. Each people may have some peculiar institutions of its own, arising from its peculiar circumstances or genius; as, among the warlike tribes of Europe, in the middle ages, land was distributed and held upon the tenure of military service, and was made to descend to the eldest son as the person most capable of performing the service required. Of course, it will be expected that the peculiar genius of a people will find expression in their laws; but human nature and the great mass of human actions are essentially the same amongst all peoples; and the dictates of justice under like circumstances are ever the same. Therefore, a system of laws growing out of the experience and exigencies of one people may be adopted with but slight alterations to the experience and exigencies of another. The laws of any State in this confederacy might easily be adapted to the wants of the people of any other State. As a matter of fact, the laws of England were adopted by all the old States and by most of the new ones, subject to such slight alterations as their condition and circumstances rendered necessary. And also, as a matter of fact, the laws of the Roman empire have again and again been drawn upon for supplying the imperfect system of English law with those rules of justice and right which had been educed and sanctioned by ages of Roman civilization. If we once concede that law is the voice of Justice, regulating the affairs of men in civil society, we cannot deny that it is, and must be, based upon uniform and permanent principles, and that it will be

evolved in substantially the same manner, and in similar formulas, in every community. And such is, indeed, the fact. In hardly any community on the face of the earth is it necessary for a person to be learned in its laws in order to live a peaceable and quiet life; all he has to do is to follow the dictates of his conscience, and endeavor to do right, and he will be pretty sure to commit no offence against the laws. If there is one thing that mankind will have it is just laws. Society can no more subsist with unjust laws than it can without any laws. Even arbitrary and despotic sovereigns, however lawless themselves, generally take good care that the people shall have the benefit of good laws for the regulation of their domestic affairs.

Law, then, being the expression of man's sense of ustice in the regulation of civil society, is not an arbitrary and empirical set of rules; but is founded upon immutable and eternal principles—the immutable and eternal principles of justice and right. It may differ in mere form and detail in different countries; but it is essentially the same in all wherever civilization prevails.

It seems to me, therefore, that there cannot be a doubt that jurisprudence is a science, and one of the grandest sciences upon which the human mind can be employed. At the same time, it must be acknowledged that the light of that science is but faintly revealed, and only in obscure glimmerings, to those who do not gaze profoundly into its depths, and acquire that legal insight which only deep study and reflection can give.

## THE ELASTICITY AND EXPANSIBILITY OF LAW TO MEET THE GROWING WANTS OF SOCIETY, ANOTHER PROOF THAT JURISPRUDENCE IS A SCIENCE.

Another proof that law is not an arbitrary set of rules, but is an emanation of human nature, and subject to immutable laws of development, is the fact that it keeps pace with the growth and advancement of society, and expands and adapts itself to every phase of social progress, whether in a moral or a material direction. The law of to-day is as adequate to the wants of our advanced social and material condition as the law of five centuries ago was to the restricted life and simpler habits of that period. And this principle of adaptation and expansion is inherent in the nature of law and does not depend upon, and does not generally wait for, specific legislation, though often aided and supported by legislation. It arises from the fact that law is the expression of justice as applied to the transactions of society. As those transactions increase and multiply, they constantly demand the application of the rules of justice, or, as it is sometimes termed, the extension of old principles (which are nothing but the principles of justice) to their peculiar conditions, and hence arises a new expression of justice and a new rule of law. For it is a primary and fundamental rule, that law is founded on reason and justice, and that if no exact precedent can be found for deciding a case, it must be decided according to reason and justice and the analogy of previous cases most nearly resembling it. If a new instrument of trade comes into vogue, for example, a promissory note, it will not be long before general

usage and convenience will originate rules and regulations as to its use and as to the rights and obligations arising upon it, which the courts (if wise and liberal in their views) will sanction as just and equitable, and which will soon acquire the force of law. If a new mode of conveyance and transportation is invented, for example, a railroad, with its steam locomotives and cars, it will not be many years before, by the judicial application of the principles of justice, already to some degree exemplified in other modes of travel and transportation, a code of railroad law will be built up, answerable to all the requirements of the new circumstances. We elder members of the profession have seen this very thing take place in our own time, and could now exhibit to the astonished eyes of our great predecessors, Coke and Hale and Holt, if they were permitted to revisit the earth, almost entire systems of law which they never dreamed of as lying in undeveloped germ in the bosom of that common law which they loved so well; undeveloped then, because the exigencies of society had not yet arisen which required their elimination and announcement. And this is the way that the common law of any country arises and is developed. It is the intellectual form, the specific idea and counterpart of the progress of society. To stop this expansion of the law would be equivalent to stopping the growth and advancement of society, and the very pulse of humanity.

When this judicial adaptation and expansion of the law becomes too slow for the progress of events, or would require too violent a change, the legislature interposes and enacts a new law amendatory of or

additional to the old. Statute law and the natural growth of the common law go hand in hand to meet the new exigencies of life and business that are constantly manifesting themselves.

### THE GROWTH OF LAW NOT TO BE SUPPRESSED BY CODES: —USE OF CODES.

This law of development is universal. No matter what codes may be devised for the purpose of fixing the law, and making it unalterable, in the nature of things it cannot stay fixed. Frederick the Great, of Prussia, was the originator of codes in modern Europe. He supposed that he could settle the law as easily as he could control his legions. He had a contemptuous regard for lawyers and civilians; and he directed his Chancellor to draw up a code, in which the whole law should be expressed in plain and terse propositions, which might be understood by all, and which would need no lawyer to explain them. Such a code he intended to establish as the perpetual and unchangeable law of Prussia. Accordingly, a code was prepared; but its imperfections prevented its adoption in Frederick's day. It was only adopted in the reign of his successor, after providing for the application of the principles of justice to new cases that might arise. This is the famous Landrecht of Prussia, which has produced innumerable commentaries for its explanation and application, and which, with all its pretensions, could not stop the progress of law, any more than it could stop the progress of human affairs.

The Civil Code of France was adopted in 1804,

and at this day there are probably a thousand volumes of adjudged cases and commentaries on the code, which have all to be consulted in order to know what the law really is.

Codes are undoubtedly useful for the purpose of settling disputed and doubtful points, and giving to the citizens the ordinary rules of law in a compact and intelligible form; but they should not be allowed to usurp the prerogatives of justice itself, seated in man's bosom, by giving to the letter of the code the inexorable fixity of a statute, and thus reducing the exposition of the law to a question of philology and verbal criticism, instead of a question of reason and justice. Used as a statement of principles and rules applicable to cases clearly within their scope, and not as restraints upon the judge in reference to other cases which are not provided for, and which require a new application of principles, *i. e.*, the principles of right and justice governing analogous cases, codes may not only be admissible, but may be of great service in systematizing and perfecting the law. They should never be employed for the purpose of giving to the law a cast-iron fixity of form, and thereby repressing all progress and imposing a deleterious and smothering restraint upon society itself.

### THE ROMAN LAW NOT A CODE, AS OFTEN SUPPOSED.

It has been supposed by some that the Roman law, as it has been transmitted to us, being in writing, is in the form of a code; but this is a mistake. The Roman, like the English and our own law, consisted of comom aud statute law. The former was a growth of time, exactly like that of England, with

small beginnings, and gradually expanding to meet the wants of civilization. It was founded on old constitutions, on the Twelve Tables, on Plebiscita, Senatus Consulta, edicts of the Prætors, responses of the juris-consults, Imperial rescripts, and long usage and custom. The only codes ever adopted in Rome were the Twelve Tables, adopted about 450 years before Christ, and the Perpetual Edict of Hadrian, adopted 131 years after Christ, 400 years before the time of Justinian. The Edict, like the French Code, was the occasion of innumerable books of commentaries; and it was in these commentaries, and other treatises on the law composed by the great juris-consults of Rome, that the common law of Rome was to be found. A great body of statute law grew up at the same time, consisting mostly of Imperial Constitutions. The two made up the whole law of Rome. Justinian appointed a commission of able lawyers, with Tribonian, his Minister of Justice, at its head, to make, not a code, but a digest of the writings of the juris-consults, which had much the same authority as our volumes of adjudged cases. This was done by making extracts from the best writers, and arranging them into a system, under different heads or titles, and dividing the whole into fifty books. This is the Digest, or Pandect, equal in bulk, if translated, to about three volumes of Bacon's Abridgment, which it resembles more in character than any other book of our law. It contains the common law of Rome in the very words of her great jurists, with all their reasonings and illustrations; and if we except the Holy Scriptures, it is the greatest monument of wisdom which antiquity has bequeathed to us.

The next work of Justinian's Commissioners was what is called the Code (Codex); but it is not a code in our sense of the word; it is a mere compilation of the existing statutes of the empire arranged in systematic order, according to the plan of the Digest, and divided into twelve books.

The Institutes is a small book altered from the Institutes of Gaius (which had been in use for four hundred years) and prepared for the use of students. It is divided into four books, and contains a summary of the law exhibited in the Digest and Code.

The Novels, or *novellae constitutiones*, are later statutes, mostly adopted during the reign of Justinian, for supplying deficiencies found to exist in the Digest and Code, or making amendments in the law. One of these novels, the 118th, is celebrated as being the law from which our statute of distribution of the personal estates of deceased persons was taken.

These four works, the Digest, Code, Institutes and Novels constitute the Corpus Juris Civilis of Rome. They exhibit precisely the same characteristics presented by our own laws as regards the gradual growth and progress of the law, and its adaptation to the changing circumstances and conditions of society.

It is to be hoped that you will some day make the acquaintance of this splendid system of law, not merely as a matter of curiosity, but as the source and fountain from which much of the common law has been drawn, as well as an inexhaustible storehouse of principles, rules and distinctions, which are succeptible of constant application to the circumstances of modern society, and the knowledge of which will be of signal

advantage in the pursuit of your profession. Hitherto these magnificent monuments, except the Institutes, have remained untranslated into English, although the civilians of Oxford and Cambridge are now beginning the herculean task. But to read them in their original terse and forcible Latin will, of itself, be accompanied with the great advantage of perfecting your familiarity with that tongue, which an accomplished lawyer cannot well be without.

But my object in referring to the Roman law is to show that it is not, as some have supposed, an exception to the general rule, that law is an outgrowth of human nature, and is subject to immutable laws of development according to the progress and necessities of civil society. From this general character of law, as before stated, I deduce an additional argument to those already advanced, that the knowledge of law, or jurisprudence, may justly be called a science.

### AS A SCIENCE THE LAW CAN ONLY BE ACQUIRED BY LONG AND PATIENT STUDY.

But it is necessary to warn you that as a science it is not to be acquired in a day, nor in a year, but only by the "*lucubrationes viginti annorum.*" As in the creation, we may suppose that the light of the stars did not all burst upon man at a single moment, but came upon him from their distant chambers in successive beams one after another, according to their recondite stations in space; so in the study of law, one great principle after another comes to the yearning mind, and overspreads it with light and gladness; and many long years may elapse before one can feel that he has really mastered the law, and fully obtained

that "gladsome light of jurisprudence," spoken of by Lord Coke. There may be one or two men in a generation, of startling genius, who by some natural inspiration or instinct, become great lawyers at a bound and achieve a glorious career without any great study or seeming effort. But they appear like the summer tornado, without observation or premonition. They are a law unto themselves alone, and furnish no guide or example for others. Ordinary men are not thus inspired; it will not be safe for you to hope for any such inspiration. You must calculate on travelling the old dusty road which we have all travelled before you. You must look forward to hard toil and slow and steady acquirement. Unless you can make up your mind to this, you had better undertake some other pursuit. I do not wish to discourage you, but to set before you the truth. The reward of perseverance is sufficiently splendid to give you courage and hope; but you cannot expect to realize it for many years to come; and those must be years of labor and study and patient expectation.

### SOME SUGGESTIONS ON THE MODE OF STUDYING LAW.

It would be out of place for me to attempt to prescribe for you a routine of studies; your learned and able professors are much more competent to do this than I am. But I may, without impropriety, make a suggestion or two as to the mode and manner of study which seem to me to be entitled to your consideration.

Of course the matter and substance of your text books are to be fully mastered and impressed upon the memory. This is taken for granted. The best mode

of doing this undoubtedly is the constant use of the pen in making full abstracts, and often reviewing what is thus written, as well for the purpose of aiding the memory as for that of getting a clear view of the subject in all its relations. But what I would particularly impress upon you is the habit of mastering the language and forms of expression of your author. In mathematics a mental conception of signs and diagrams is chiefly important in the acquisition of geometrical truth; the exact language of the propositions and demonstrations is not of vital importance. A mathematical professor will be satisfied with his student if he finds that he comprehends the mathematical ideas, without scrutinizing his style of expression. But it is not so in the law. Here it is not only necessary to know the rule, but to know how to express it in appropriate language. There is no science in which the words and forms of expression are more important than the law. Precision of definition and statement is a *sine qua non*. Possessing it, you possess the law; not possessing it, you do not possess the law, but only the power of vainly beating the air with uncertain words which impress nobody, instruct nobody, convince nobody. In the law all the knowledge in the world without the power of expressing it in apt formulas and correct diction, is useless to the possessor. This language may seem hyperbolical, but it is true. A lawyer without the power of clear and accurate expression is like a seventy-four gun ship grounded on a sand-bar, unwieldy, unmanageable, and the easy victim of any small craft of the enemy that happens to be abroad. I wish this sentence could be deeply lodged in your minds, to wit: It is of the utmost

importance to a student of the laws to acquire besides a knowledge of the law itself, the power of expressing it in correct and appropriate language, such as is found in books of authority. For correct and appropriate diction is as necessary to the lawyer as a knowledge of the law.

Some men have a natural gift of recalling the exact language of the books they read and master. Their word memory is exceptional, sometimes almost miraculous. But there are few who are thus gifted, and to most persons it is a laborious task to store up in their minds the accurate terms, phrases and definitions of the law. The treasure to be secured, however, is worthy of the greatest pains.

Perhaps one of the best aids to the accomplishment of which I speak is to choose some author of pure and accurate diction, and make his works a *vade mecum*, until you have become so familiar with its contents that, although not absolutely committed to memory, the words and forms of expression will spontaneously suggest themselves whenever you begin to speak or write on the subject. Of course, there can be no doubt what book should be chosen for this purpose. There is nothing to compare with the Commentaries of Sir William Blackstone in completeness of scope, purity and elegance of diction, and appositeness, if not always absolute accuracy, of definition and statement. One of the greatest, if not the greatest of forensic speakers, as well as lawyers, that I ever knew, was the late Mr. George Wood, of New York—in his early days a leader of the Bar of New Jersey. His discourse to the Court was always grave, dignified and commanding; his diction was

chaste and pure, and his style was rich in correct legal phraseology; so that he seemed, when speaking, to be the personification of the law itself. He made no gestures, and but few references to authorities; he did not need authorities; you knew, as he spoke, that what he spoke was the law. All was reduced to such plain and simple principles, and enforced with such logical clearness of argument, in the chastest as well as the richest and most appropriate legal diction, that he compelled the closest attention and carried conviction along with him to the end. I have often hung upon his lips with chained attention, even when opposed to him in the case, and can truly say that I never enjoyed a greater intellectual treat than in listening to his arguments. Now, I happen to have heard from one of Mr. Wood's contemporaries an account of the method which he pursued for acquiring his wonderful command of choice juridical diction.

It was his custom for many years, in the earlier part of his professional life, when not overburthened with business, to read a chapter of Blackstone of a morning and then to take a long walk, and repeat to himself all that he could remember of what he had read, even to the very words and phrases in those parts that were important, such as definitions and the like. If not satisfied with the first trial, he would repeat the process on the succeeding day, and in this manner, chapter after chapter, he went through the commentaries, until they were so perfectly mastered, both in matter and form, that he became almost a walking commentary himself.

His case illustrates the oft repeated injunction, to

"Beware of the man of one book." This injunction is based on a truth of much importance to the professional student. Perfect familiarity, perfect mastery of any one good book is a mine of intellectual wealth not merely, not so much, for the matter which is thus made one's own, as for the vocabulary, the diction, the style and manner of expression which is mastered and indelibly fixed in the mind. How many pulpit orators, and even secular speakers, have become noted for their eloquence by their familiarity with, and ready use of, the language of sacred scripture! And when the one book mastered in this way is such a book as Blackstone's Commentaries, it is easy to comprehend what power and beauty may be acquired and laid by for future use in the display of forensic eloquence.

This method of constant and repeated study of a few good books, gives one also a firm grasp of the principles of the law, as well as of the forms of expression. The particular books are not essential, if they are good books, and by authors of original authority. When a student at law I took up, out of the regular course, Gilbert on Evidence, the original edition, a small book, but full of principles and grounds of the law, after the manner of the great Chief Baron. I studied it carefully over and again, and I believe that I derived as much benefit from that little old book as from any I ever read, except, perhaps, Stephens on Pleading, which I studied in much the same manner. I conclude that it was not so much the particular books, as the manner of study, which produced a beneficial result.

Another branch of reading, not comprised in the

regular course, and which is productive of the greatest benefit, is that of great leading cases in the reports—here and there one—like that of Twyne's Case and Shelley's Case, in Coke, Coggs *v.* Bernard, in Lord Raymond, Miller *v.* Race, in Burrow, etc., not forgetting the great Constitutional cases decided in this country, in which Chief Justice Marshall delivered those profound opinions which have immortalized his name. The careful reading of a case—the whole of it—including the arguments of counsel, will enlarge one's knowledge of the law, strengthen the understanding and furnish a key to the methods of juridical discussion in the courts.

### THE STUDENT OF LAW MUST BECOME ACQUAINTED WITH THE STRUCTURE OF CIVIL SOCIETY, AND WITH HUMAN AFFAIRS AND BUSINESS.

But if I have succeeded in my object, I have impressed upon you the conviction that the law is not to be studied and learned like a dead language, in books only; but that it is a living subject, embodied in and sustaining that civil society of which you are members, and manifested in its organic form, and in the rules and regulations by which it is ordered and made harmonious and conducive to the greatest human happiness.

All this may seem to be very common knowledge—almost home-spun truth. But home-spun truths often need to be impressed upon the attention. Their importance is frequently overlooked. One deduction to be drawn from the truth which I have endeavored to present is, the importance, to a student of law, of

having a knowledge of affairs, a knowledge of civil society, its constitution and doings; a knowledge of what is taking place around him. He should know, as far as possible, the reason of everything. In other words, he should be wide awake, and, with open eyes, should watch this great drama of human life which is being acted in his presence; and not go dreaming around, with his head down, dwelling only and always upon the metaphysical quiddities of the law. These quiddities may be very good in their place; but they should not be allowed to absorb the whole attention of the student, and entirely divert it from the fresh, green views presented by that living law which he is to apply to actual life around him, and which he can only understand in its true spirit by a wide and varied knowledge of that life as the material and ground work of civil society. Of what use will it be to him to know all about the British Constitution, for example, if he does not understand our own Constitution, Federal and State? Of what use to know the organization of the government and the courts of England, if he does not know that of our own government and courts? Probably you all know the number, the names and boundaries of the counties in your own State; but do you know what are the officers of each county, and what are their powers? Can you tell by what authority roads are laid out and bridges are built? Can you tell by what authority a telegraph pole is erected in front of your door? Are you acquainted with the powers of the Common Council of the city in which you live? A man of ordinary good intelligence finds out many of these things without suspecting that he is learning something of the law. He picks

them up from the newspapers, from conversation, from everything that affords him information. He is wide awake to what is going on around him. His eyes are open. He takes in knowledge at every pore. So the law student should be. To put it in a homely manner, he should have "an inquiring mind." Ulpian, as before stated, says that jurisprudence is the knowledge of things human and divine, as well as the science of what is just and what is unjust. This is a broad definition, but it is suggestive. The lawyer ought, indeed, to know almost everything, for there is nothing in human affairs that he may not, some time or other, have to do with. At least, he ought to be acquainted with all those things which go to make up the form and body, the life and order of the society in which he lives. He ought to know its civil institutions and their several functions. He ought to know all those things about his country and his State which would enable him to speak intelligently of their institutions, their policy, and their public proceedings. He ought to know how ordinary matters of business are transacted; the forms and meaning of bonds, promissory notes, bills of exchange, bank checks, drafts, leases, releases, ordinary deeds, policies of insurance, agreements. He ought to interest himself to learn the actual methods of doing business, not only in private counting houses, in the market and in the exchange, but also in the halls of city, State and Federal legislation. A great mass of this sort of general knowledge and information can be acquired by one anxious to learn, without interfering with the general course of his studies; and it will throw great light on his studies. It will often enable him to understand and apply them when other-

wise their use and application would not be recognized. The sort of knowledge to which I refer is largely to be found in the statute-book, and that, however much despised, is a book which ought always to be within the student's reach. It should be his *vade mecum*, not to the exclusion of scientific text books, but as an adjunct and interpreter of them. The statute-book exhibits the actual institutions and regulations prevailing in the State at the present time.

One of the advantages of studying law in the office of a practitioner is the acquisition, to some extent, of the kind of knowledge to which I have referred. The student is there brought in contact with the business world, and the practical application of the law to actual cases. He copies deeds, agreements, documents of every kind, as well as legal papers, and is often charged with business transactions that increase his general knowledge.

I do not underrate the study of law by scientific methods, as it is pursued in this and other schools. This method of study is of the greatest value. It makes scientific lawyers. It gives general and harmonious views of the law. It awakens an interest for its profound depths. But whilst the science is studied here, its application to the status, the exigencies and the wants of society may be learned, and best learned, by a study of the living subject itself—civil society—and the transactions that prevail in it; everything that exists and every thing that passes about one in the social state.

I have urged this view upon your attention because I have often seen young men settle down into mere book worms of the law, losing their interest in passing

events and what is going on around them, and thereby becoming unadapted to the active professional duties of the lawyer, which exhibit him in his most useful character, and bring him the richest rewards.

### THE LAWYER'S STUDIES FIT HIM TO TAKE A LEADING PART IN THE STATE.

These considerations lead us to another interesting view of our profession. The subject of the lawyer's studies necessarily makes him intimately acquainted with all the duties of the magistrate, as well as all the duties of the citizen; with the rules of conduct that actually prevail, and with the wants and necessities of the body politic requiring any change or modification of these rules. Of course with this species of study and training, no class of the community is so well qualified as the lawyer to take a leading part in the affairs of the community, in the making and in the administration of its laws, and in the execution of the powers of government. It is the legitimate and proper result of his studies and training. This is only true, however, when the lawyer takes a broad and liberal view of his profession, and regards it, as it should be regarded, as ancillary to the promotion of justice and right amongst men, and the general good of the State. The merely technical pettifogger, the *leguleius cautus*, is more unfitted than other men to counsel and govern the State, because the narrow and incorrect views which he takes of his profession rather lead him astray, to the promotion of mischievous devices and expedients, than to wise and prudent measures. He knows both too much and too little;

too much to be modest, prudent and conservative, too little to take wise and enlightened views. Hence it often happens, as the result of such unfortunate examples, that a popular jealousy and distrust of lawyers prevails in keeping them out of places of public trust.

How important, therefore, it is to themselves as a class, as well as to society at large, that the students of justice and right, should be imbued with the principles of justice and right, so that the profession may take that high and noble position in the community which, when it is faithful to itself, is its just prerogative.

## CONCLUSION.

The few suggestions that I have made with regard to the range of inquiry desirable in the study of law must not be taken as complete. In a single lecture I can only set forth a few things to be acquired or done that strike me as important, and that may not be obvious to the student. There are, of course, many others which I cannot dwell upon, such as general history, the history of the law, legal biography, political philosophy, political economy, and many more, which the student must in time acquire, in order to become an accomplished lawyer. To sum up all in one word, in order to be an accomplished lawyer, it is necessary, besides having a knowledge of the law, to be an accomplished man, graced with at least a general knowledge of history, of science, of philosophy, of the useful arts, of the modes of business, and of everything that concerns the well-being and intercourse of men in society. He ought to be a man

of large understanding; he must be a man of large acquirements and rich in general information; for, he is a priest of the law, which is the bond and support of civil society, and which extends to and regulates every relation of one man to another in that society, and every transaction that takes place in it.

Trained in such a profession, and having these acquirements, and two things more (which can never be omitted from the category of qualifications), incorruptible integrity and a high sense of honor, the true lawyer cannot but be the highest style of a man, fit for any position of trust, public or private; one to whom the community can look up as to a leader and guide; fit to judge and to rule in the highest places of magistracy and government; an honor to himself, an honor to his kind.

PROCEEDINGS AT THE ORGANIZATION

OF THE

# UNITED STATES

# CIRCUIT COURT OF APPEALS

FOR THE

# THIRD CIRCUIT,

AT PHILADELPHIA,

ON TUESDAY, JUNE 16, 1891,

AT 12 O'CLOCK, NOON.

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The following Judges were on the bench:

MR. JUSTICE BRADLEY, of the Supreme Court of the United States.

HON. MARCUS W. ACHESON, Judge of the United States Circuit Court for the Third Circuit.

HON. WILLIAM BUTLER, Judge of the United States District Court for the Eastern District of Pennsylvania.

HON. LEONARD E. WALES, Judge of the United States District Court for Delaware.

HON. EDWARD T. GREEN, Judge of the United States District Court for New Jersey.

HON. JAMES H. REED, Judge of the United States District Court for the Western District of Pennsylvania.

A large number of the members of the Bar of the Circuit were present.

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MR. JUSTICE BRADLEY SPOKE AS FOLLOWS:

This being the day appointed for the first meeting of the Circuit Court of Appeals, we have met for the purpose of organizing the Court. According to the Act of Congress, the Court is to consist of three Judges—the Associate Justice of the Supreme Court, together with a Circuit Court Judge and such District Judge as may be assigned for the purpose.

We have agreed upon a general order, which I will read and which will be adopted by the Court.

"United States Circuit Court of Appeals for the Third Circuit, at the City of Philadelphia, this third Tuesday of June, 1891.

"IT IS ORDERED that, when it shall be necessary in order to make a full court that a District Judge should be assigned for that purpose, the District Judges of the Circuit shall be assigned in rotation according to the date of their commissions respectively, beginning at this present term with Hon. William Butler, the Judge oldest in commission; and each Judge shall be assigned for an entire term; and if at any time during the term, two District Judges shall be required, then the Judge next in order to the one already assigned shall be assigned for the purpose; and so in like manner if three of such Judges shall be required; and if any Judge assigned to sit in the Court shall be incompetent to sit in a particular case, the Court may assign any other District Judge to take his place for the hearing of such case, and the cases on the docket in which any Justice or Judge of the Court is incompetent to sit may be arranged in a separate docket, to be heard when the Court is properly constituted for the purpose. And if at any time, in consequence of the absence of any member of the Court, an additional Judge is required to make a full Court, the Court may assign and call in any District Judge to sit for the time being in place of the member so absent.

"IT IS FURTHER ORDERED, that there shall be two stated terms of this Court in each year, to commence and be held respectively on the third Tuesday of March and the third Tuesday of September, at the City of Philadelphia.

"IT IS FURTHER ORDERED that William V. William-

son be, and he is hereby appointed the Clerk of this Court, and that Abram D. Harlan be, and he is hereby appointed the Marshal of this Court.

"IT IS FURTHER ORDERED that the rules hereto annexed shall be the generul rules of the Court."

This order is agreed to by the other members of the Court, and will be recorded by the Clerk in the minutes.

It is unnecessary for me to read the general rules adopted by the Court. They are modelled upon the rules of the Supreme Court of the United States, and will be changed should circumstances require. The name adopted for the Court is "The United States Circuit Court of Appeals for the Third Circuit." The terms have already been referred to, two terms a year to be held at this city. I may add that the law constituting the Court authorizes it to be held at other places than Philadelphia, but this being a very compact circuit, and there being always inconveniences attending the removal of the minutes of the Court and in travelling about with the records to other places, it seemed to us best for the public interests, and quite as much for the public convenience, to have the Court always held here.

There are two or three rules to which I will call your attention. One is of most interest to members of the Bar, and is as follows: "All attorneys and counsellors admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the United States, shall become attorneys and counsellors of this Court on taking an oath or affirmation in the form prescribed by rule of the Supreme Court of the United States, and on subscribing to the rule, but no

fee shall be charged therefor, and all attorneys and counsellors of the Circuit Court of the United States for the Third Circuit shall be attorneys and counsellors of this Court without taking any further oath."

Therefore the attorneys and counsellors of the Circuit Court may consider themselves as attorneys and counsellors of this Court. It would be a useless ceremony to require a further oath or affirmation from them.

There are rules with regard to bills of exception. Of course, these will be in the hands of the attorneys and will be carefully examined by them.

The rules which are here appended are adopted by the Court, and they will be recorded in the minutes.

Mr. Justice Bradley then administered the oath to William V. Williamson, Clerk, and to Abram D. Harlan, Marshal.

Mr. Justice Bradley then spoke as follows:

It must he conceded that the organization of this Court and similar Courts in the other circuits is a very important event in the history of the jurisprudence of the United States. This Court is clothed by the statute creating it with a large portion of the appellate jurisdiction heretofore exercised by the Supreme Court, and, in some cases, in fact, in the majority of cases, the decision of this Court is to be final, with the exception of the right of the Court to certify any questions of law to the Supreme Court for its instruction, and with the further exception that if this Court does not make such certificate when it is applied to for it, the Supreme Court may issue a certiorari to this Conrt requiring causes to be certified to it for hearing on appeal. This last

power given to the Supreme Court will probably be a cause of considerable anxiety to that Court, for, in most of the cases where this Court shall refuse to grant a certificate, application will probably be made to the Supreme Court for a certiorari, unless by the consideration and fair judgment of counsel the multiplication of such applications is avoided.

The cases in which the decision of this Court is to be final are, first, all the cases that arise under the State laws, that is to say, all the cases in which the jurisdiction of the Federal Court depends on the citizenship of the parties. In all such cases it is the State law that applies, and not the Federal law. Heretofore that department of the jurisdiction of the Supreme Court has been very extensive, and complaints have sometimes been made that the Supreme Court has not followed the line of decisions of the State Courts, which are generally the primary exponents of the State law. I think, however, that the Supreme Court has generally, if not always, manifested a strong desire to follow the lead of the State Courts with regard to State jurisprudence where it could do so without what appeared to it an obvious departure from sound law. The rule by which the Federal Courts are governed in this respect was attempted to be laid down by the Supreme Court in the case of Burgess *v.* Seligman, in which it was held that where the local law had become settled by a reasonably uniform line of decisions, the Federal Courts would not, and indeed could not, depart from them, because it is their duty to administer the law as it is, and the law, when it has become settled by a course of decisions in the State Courts, must be

accepted according to those decisions. But where the State Courts have not come to any definite conclusion upon a particular point of law, or where there have been vacillating decisions on the subject, the Federal Courts have felt it to be their duty and their prerogative to judge for themselves what the State law is, because the clause of the Constitution which extends the judicial power of the Federal Government to controversies between citizens of different States was intended to give them an impartial tribunal for the decision not only of the facts, but of the law; and, therefore, it is the duty of the Federal Courts to judge for themselves what the law is in all cases where they have jurisdiction by virtue of the divers citizenship of the parties, as well as in other cases.

Now, this Court will be the tribunal for the final determination of all such cases, unless questions arise which the Court may deem it right and proper to certify to the Supreme Court for its instruction; and it will undoubtedly be governed by the same principles which have been adopted and followed by that Court.

The finality of the decisions of the Court is extended, also, to all cases arising under the patent laws, under the revenue laws, under the criminal laws (that is to say, in cases of inferior crimes which cannot be carried directly to the Supreme Court), and in admiralty cases. These branches of jurisprudence embrace almost all the jurisdiction of the Court. Very little is left of the class of cases that will come to it which can be carried to the Supreme Court except by certificate or certiorari.

Of course we cannot forecast the rules by which the Court will be governed in making such certificates,

but we can say that it ought to be cautious about making them, and counsel ought to be considerate in demanding them, for the Court must, in the end, depend very much upon the Bar for the manner in which justice shall be administered.

I look upon this as a very important period in our history with regard to the administration of justice in the Courts. When we see the turbulence that exists in some portions of the community, people taking the law into their own hands and exercising what is called Lynch law, without reference to the Courts of Justice or to the Government of the country, it is a sad spectacle to every man who has the good of the country at heart. Why is it? Does it arise from the nature of our population or government, or does it arise from defects in the administration of justice by the Courts? In my judgment, it is greatly due to the latter. If the laws were administered with firmness and promptness, there would not exist such a strong disposition on the part of the people to take the law into their own hands. There would be two reasons to prevent it; their fear of the law against themselves for the unlawful act, and the fact that justice would be done by the Courts without their interference.

How, then, can this evil be remedied by the Courts so far as it depends on their mode of administering justice? There is only one way, and that is to be more firm and prompt in its administration. We have an example before us in the administration of justice in England by which we might well profit. There we do not see, as with us, such endless controversies raised out of a particular case and carried through all the Courts. This is not the fault of the Courts alone.

There is ground for condemning the Bar for insisting upon minute points and refusing to accept the decisions of the Courts of first instance, and seeking an appeal to the Court of last resort in every case on every trivial question. The Bar, in justice to itself, should seek reform in this regard. Could such a state of things exist in England? Assuredly not. The barristers of England would feel a blush of shame to carry before the Courts of Appeal such cases as are constantly urged before the Courts of Appeal in this country. Why? Because there is in them a love of justice created either by their education or their surroundings that makes them more regardful of the honor of the Court and their own.

We can, if we please, through our Bar Associations and other influences, reform this evil, and it ought to be reformed.

The Courts themselves are not free from blame in contributing to produce the evil complained of. They betray a want of firmness and of loyalty to the demands of justice. In criminal cases they give way too much to their sympathies. They partake too much of the feeling of the community, which, after a time, always sympathizes with the guilty instead of sympathizing with those who have been injured by them. And in civil cases there is often a want of conscientious performance of duty. It not infrequently happens that important cases are submitted without argument, or only formally argued, before an inferior Court, and formally decided by that Court, for the mere purpose of carrying them up to the Court of last resort. This is all wrong. It turns the Court of Appeal into a Court of original jurisdiction. It takes

from the inferior Court that sense of responsibility which it ought to possess, and lowers it in the estimation of the Bar and the public. Every Court ought to give to each case presented to it as full and as grave consideration as if no right of appeal existed. This would often, and should much oftener than it does, end the litigation; and if an appeal is taken, it would give the Court of Appeal the benefit of a full consideration of the subject by the inferior Court.

Perhaps in these remarks there is too great an appearance of what might be called judicial scolding, but it seems to me, and it has long seemed to me, that they are founded in truth.

This Court and the other Courts of Appeal organized to-day are destined to exercise an important influence on the jurisprudence of the country; for notwithstanding the occasional supervising influence which may be exercised by the Supreme Court, practically these Circuit Courts of Appeal will be the courts of final resort in all cases of Federal jurisdiction, except those directly appealable from the District and Circuit Courts directly to the Supreme Court.

It will not probably be my lot to continue long in assisting to carry on the business of the Court, but I hope and believe that by the aid of an intelligent and honorable Bar, the Court will be a blessing to this community and to the country.

I believe we have no business before us to-day, and when we adjourn we shall probably adjourn for the term. Any business required to be done during the vacation can be done by a single Justice or Judge.

Hon. Wayne MacVeagh then spoke as follows:

May it please your Honors: The Bar of this city,

and our brethren of other districts who are to be associated with us hereafter as practitioners at the Bar of this Court, felt that it was due to testify, at least by our presence if nothing more, the profound interest we feel in the Court which has just been organized and the expectation of great good which we cherish from its future history. No assurance of mine of the extent of the interest of the Philadelphia Bar in the organization of the Court which has just taken place could equal the assurance given by this very large and representative assembly of its members. And I know I speak for every one of them in saying that they have been thrice repaid for coming here if nothing else had been offered them but the privilege of listening to the remarks of the Associate Justice of the Supreme Court of the United States, who is, by law, the presiding officer of this Circuit Court of Appeals of the United States for the third Circuit.

There has, indeed, been nothing in what he has said which does not meet with the hearty approval of this Bar, I am sure, except one thing, and against that we enter our vigorous, our united, our earnest protest: that there shall be a long period yet in which justice in this Circuit Court will be administered, by the favor of God, with his assistance.

Your Honors may be sure that the Bar of Philadelphia has never for a single day since the organization of the Federal Judiciary, been in the slightest danger of undervaluing it. It began its life here. Some of its most illustrious members had previously given the benefit of their learning and character to this Bar. We have contributed to its distinction

and honorable history; and in all that long period of more than a hundred years there has never been an hour when a member of the Federal Judiciary connected with the administration of justice in this Circuit has not had, not only the respect, but the affectionate reverence of the members of the Philadelphia Bar; and they quite agree with Mr. Justice Bradley in thinking that there never were days in the past more likely to ascertain and establish the ultimate value of the Federal judicial system than the days of the immediate future. And we know very well that if justice is to be administered in America hereafter to the satisfaction of the great body of our fellow-men, it must be prompt and certain and pure, all within reasonable limits of human infirmity, and that in the securing of such promptness and certainty and purity, the Bench must almost entirely rely upon the Bar; and, for one, I have no doubt that the Bar will answer the demand upon it in the future as it has answered it in the past.

No doubt, in the hurry and turmoil of professional business, we have fallen away somewhat from our former high estate. We are more commercial and less judicial; we are not quite up to the standard even of our own selves of thirty years ago; but that is because in the great material development of a great and growing country, standards not quite as worthy as the old ones have, to some extent, displaced them. That is only a passing phase of American history, and will disappear with other evils which have marred our progress. As that phase disappears, the members of the Bar of America will be worthy of the illustrious names which gave such distinction to its past history; and, in the meantime, speaking for the Bar,

may I venture to suggest that there is one way in which the Bench can greatly help us to be more worthy of our opportunities and our traditions? and that is by a little more endeavoring to recognize us as barristers, and a little less regarding us as attorneys only. If you would think of us a little more as we really are, your brothers, sworn to the same fealty to justice as you are, whose time is as valuable to us as yours can be to you, whose opportunities of knowing when and how justice can be properly administered are at least as great in any particular case which we have studied long as yours can be hearing of it at the moment. If you will only consider that a lawyer is a sworn officer of justice and not likely to disregard his oath, and that, therefore, when we come before you, the humblest and the youngest, especially the humblest and the youngest, we ask you to receive us upon the presumption that we will not waste a moment of your time or of our own; that we will not trifle with any of the rights belonging to anybody else any more than we will willingly suffer our own to be betrayed; and that in all ways we are your helpers as well as your brothers in the administration of justice.

And, then, too, we must ask you occasionally to forget that you are upon the Bench, and to remember that you are living in America and at the close of the nineteenth century, with the telegraph, with the telephone, with all the innumerable activities of modern life pressing upon everybody, and, therefore, when no lawyer competent for important legal business can always be at your call. He wishes to be, but if in any important question he is competent to advise you, he owes his first allegiance to the Supreme Court of

the United States; he owes his second allegiance, in my theory, to the Supreme Court of his own State; and his third allegiance he owes, I admit, to the Circuit Court of Appeals for the Third Circuit. Now, if you will recognize the order of these obligations, and if you will have patience with us, we will endeavor to be a little more worthy of your confidence and regard.

I listened with great pleasure to what Mr. Justice Bradley said when contrasting the English Bar with ours; but I could not help thinking while he was speaking, that a recent judicial experience in England could have no parallel here. We have no court of justice, which, if any man was on trial for his honor, could be changed into a pleasure ground, as was done there; and no ladies, high born or otherwise, would be allowed to amuse themselves while a tragedy was being enacted which possibly was to doom many people to misery and one to dishonor. And yet we have many things to learn here; many changes we hope to make; many improvements we hope to witness. In them all we will never lose sight of the inexpressible debt of gratitude we owe to the Federal Judiciary, for to it we signally owe, in my judgment, and especially in the last twenty-five years of its history, the final establishment of the true doctrine that the American Government is "an indestructible Union of indestructible States." That Court and this Court and our own State Courts will all, I trust, in the future as in the past, continue to teach the American people the one lesson they need always to garner in their hearts—and that is, that the only liberty worth having is liberty regulated by law.

Hon. Anthony Higgins, Senator of the United States from Delaware, then spoke as follows:

With submission to your Honors, I have been requested to say a word on this interesting occasion on behalf of my brethren of the Bar of the District of Delaware, some of whom are here in person, to testify to that deep interest which all feel on this most important occasion, one which has been truly said by his Honor, Judge Bradley, to be an event of the first moment.

It will not be out of place to recall a word of the history of the enactment of the statute under which this Court has been organized. As the bill passed the House of Representatives, it was structurally different from its final shape. The Judiciary Committee of the Senate entertained profound differences of opinion as to the true form that the act should take, and it ended in being left substantially with Mr. Evarts and Mr. Hoar to determine what that should be, and especially to Mr. Evarts; and the bill in the shape as they approved of it with the minor amendments was adopted by the Senate, and then through circumstances that are measureably obscure and need not further be referred to, final action was postponed until a few days before the end of the session, when the only possibility of the bill becoming an act rested in the adoption of the bill as it passed the Senate by the House, and in that form it was passed, and so it came about that this most important act received its final shape from the hands of one of the most eminent members of the American Bar.

The action thus at last taken by the Government for the relief of the suitors in its Courts was in

great measure due to the agitation of the subject by the American Bar Association, upon whose committee were, among others, Mr. Francis Rawle, of Philadelphia, and Mr. George H. Bates, of Delaware; and a large part of this honorable effort was made by other members of the Bar of this Circuit, who were upon the committee in charge of it, and especially, Hon. Henry Reed, and Mr. Samuel G. Thompson, of Philadelphia.

The idea that impresses me most to day is that, during the judicial history of this country, the Supreme Court of the United States has discharged the great function of being the governor, the directing agency, in the final determination of the law on that wide scope of commercial and other questions, questions not of Constitutional law, which have now been taken from that jurisdiction and conferred upon the Circuit Courts of Appeal. The momentous consideration resting before the members of these Courts throughout the country is that this great function, this great discretion, this great power, is now vested with them very largely, subject, of course, to cases being carried by certificate to the Supreme Court either upon the initiative of the Circuit Court or by the order of the Supreme Court itself, but as that can only happen in a few cases in the substantial administration of justice, this great power is now with this Court.

As we look back over one hundred years, and in our imaginations bring up the day when the Supreme Court was first organized, and then go along through these hundred years and realize that the history of America, more than in the story of its politics, of its wars, of

its territorial aggrandizement, has been in the judicial evolution of its domestic and Constitutional law, we stand with reverence here to-day at the opening of this new chapter of our national and our judicial history, and I can only speak for myself and my brethren of this Bar in our feeling of absolute confidence in the honor, in the capacity, and in the respect for the great traditions of the law, that we feel are held by the members of this Bench.

Mr. Justice Bradley then adjourned the Court until the Third Tuesday of September.

## THOMAS HOBBES.

Born at Melmesbury, April 5, 1588. Died December, 1679, in his 92d year.

I bought his works December, 1879. For his autobiography in Latin, see Vol. I, Latin Works and "Auctarium" thereto by R. Blackbourne, and an autobiography in Latin verse. Also see Appleton's Encyclopedia of Biography, Art. Hobbes, by Professor Nichol, 1854, highly appreciative.

Allibone's Dict. of Authors, where is a list of his works, and quotations from a catena of authors respecting Hobbes and his writings. To Allibone, a free-thinker is like a red rag to a bull.

Hobbes was acquainted with Lord Bacon, and assisted him, as Aubrey says Hobbes told him, in taking down his notions, and turning some of his essays into Latin. This must have been about 1620, when Bacon was Chancellor, and Hobbes 32 years old. (Montague's Life of Bacon, Vol. I, p. 257. Note 3 I to life).

Amongst his friends were also Ben Johnson, Edward, Lord Cherbury, Lord Clarendon, Gallileo, Mersenne, Gassendi, Des Cartes, Selden, Harvey Chillingworth, Cowley, Chief Just. Vaughan, Sir W. Davenant, Sam Butler, Auth. A. Wood and Aubrey.

When Bacon's sixtieth birthday was celebrated, 22d January, 1620, at York House, Ben Johnson wrote a poem on the occasion, and, no doubt, Hobbes was present. (Montague's Life of Bacon 259). Bacon must have been surrounded by a galaxy of young men

of genius. He liked to have Hobbes' assistance because he could understand him better than the others could. At 20, Hobbes, after graduating at Oxford, went as tutor and companion to the son of Wm. Cavendish, Lord Barkley, afterwards, Earl of Devonshire, and remained in the family for the greater part of his long life. He travelled in France and Italy in 1610 with his pupil, and again in 1634 with his son.

In 1640, after the action of the Long Parliament indicated the approach of the civil war, he returned to Paris and staid their until 1652, part of the time mathematical tutor to Charles II. He returned to England, however, in 1652, because Charles withdrew from him his protection on the appearance of the Leviathan.

His life in the Devonshire family, when not engaged in the duties of tutor, was spent in study and philosophizing in the summer at their country seat, in winter, at their house in London.

His principal works are:

Translation of Thucydides, published 1628.

De Cive, Paris, 1642.

De Natura Hominis, London, 1650.

De Corpore, politico, London, 1650, English.

Leviathan, London 1651.

De Corpore, 1655.

De Homine, 1657.

Liberty and Necessity, 1654.

Translations of Homer, 1674, 1675.

Behemoth, 1679.

And many pieces on Mathematics and Rational Philosophy. He was undoubtedly the most original thinker of England in his time. His style is perspic-

uous and free from ornamentation, exactly suited to philosophical disquisition. His notions are regarded as very heterodox, for he acknowledged no authority but reason.

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## AGE OF EGYPTIAN CIVILIZATION.

In the years 1851–1854 Mr. Leonard Horner (brother of Francis Horner), under the patronage of the Royal Society of London, made a series of excavations across the valley of the Nile in the latitudes of Memphis and Heliopolis, to discover, if possible, the character and age of the alluvial deposit. He found that the base of the Colossal Statue of Rameses II, which was erected about B. C. 1360, was covered by nine feet four inches of the regular accumulation of alluvium, making for the average from B. C. 1360 to A. D. 1854 (or 3,214 years) 3½ inches for each century. His excavations near the same spot showed that the deposit of mud below the base of the statue was 30 feet, and he found fragments of pottery, and other works of man, to the very bottom. This would indicate the presence of human civilization in the Nile valley for a period of 10,300 years before Rameses II, or 11,600 years before the Christian era; for 30 feet contains 360 inches, and this divided by 3½ inches gives 103 centuries. Horner's Report was published in the Transactions of the Royal Society for the year 1858, pp. 53–92. The results are stated in Bunsen's "Egypt's Place in History," Vol. III. Preface, pp. xxiii, etc.

(See also Baldwin's "Prehistoric Nations," 303).

Bunsen deduces the same result, as to the antiquity of the early inhabitants of Egypt from the form of the Egyptian language as compared with other languages to which it is related.

For a flippant review of Horner's report in connection with Bunsen's "Egypt's Place in History," see *Quarterly Review* for April, 1859 (Vol. CV, pp. 230–232, Amer. Ed.), and see Bunsen's reply in Vol. V of "Egypt's Place in History," p. 122. See also "Wilkinson's Egypt," Vol. I, p. 8, note.

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## MACAULAY.

They say Macaulay was not a critic; that he had great memory, but little of the reasoning faculty. Is not he the best critic who can analyze without rules? Who sees through a thing, and reports its essence without taking it up by parts and pieces? As Carlyle said of Miribeau, "A man not with logic spectacles, but with an eye"; or as Coleridge said of Wadsworth, "His soul seems to inhabit the universe like a palace, and to discover truth by intuition, rather than by deduction."

The greatest critic of modern times was Lessing, whose logical faculty and power of analysis, as well as healthy, sound judgment, were of the highest order, and whose ideas have laid the foundation of the best modern criticism.

## HISTORY.

Macaulay's "History of England" from the accession of James II (1685), which, in its unfinished state, as he left it, extends only to 1700, makes us wish that a complete history of England could have come from his hands. So far as he went, his work is so complete, so picturesque, so entertaining, and so instructive, that it has all the charm of romance with all the accuracy of annals. A tolerably continuous history of England and portions of Europe may be made up from his reviews, written in a style equally animated, and perhaps, somewhat more rhetorical. I have made an arrangement of these so as to present in chronological order the periods discussed, with the exception of one on the papal history, which may be regarded as an appendix to the rest. Some of the articles have relation to literature; but they illustrate the periods to which they relate. Of course, this list does not contain all Macaulay's reviews, but only such as constitute monographs on important epochs or leading events in English History.

Macaulay's historical articles in the *Edinburgh Review*.

| | Period. | Written. |
|---|---|---|
| Review of "History," | | 1828 |
| Hallam's Constitutional History of England, | | Sept. 1828 |
| Burleigh and His Times, | Elizabeth, | Apl. 1832 |
| Lord Bacon, | James I, | July 1837 |
| Hampden (Memorials of H.), | Charles I, | Dec. 1831 |
| Milton (Puritan and Cavalier), | Commonwealth, | Aug. 1825 |
| Cowley and Milton (Dialogue on the Rebellion), | Essays. | |

| | Period. | Written. |
|---|---|---|
| Sir William Temple, . . | Charles II, | Oct. 1838 |
| Revolution of 1688, by McIntosh. (Here read Macaulay's history itself). . | James II, | 1838 |
| The Spanish Succession, . . | William III, | Jan. 1833 |
| Addison, . . . , . | Anne, | July, 1843 |
| Atterbury's Life (Encyclopedia Brit., 8th ed,) | | |
| Horace Walpole, . . . | George I, | Oct. 1833 |
| Lord Chatham, . . . | George II, | July 1835<br>Oct. 1844 |
| Frederick the Great, . , . | George III, | Apl. 1842 |
| Dr. Johnson (Boswell's Life, by "Croker,") | George III, | Sept. 1831 |
| Dr. Johnson, Life in Encyclo. Brit., | George III. | |
| Lord Clive (Establishment of Indian Empire), . . . . | George III, | Jan. 1840 |
| Warren Hastings (Enlargement of do.), | George III, | Oct. 1841 |
| William Pitt. Life (Ency. Brit., 8th Ed.), | George III. | |
| Mirabeau. French Revolution, . | George III, | 1832 |
| Barere's Memoirs, . . . | George III, | Apl. 1844 |
| Madam D'Arblay, . . . | George III, | Jan. 1843 |
| Sir J. McIntosh, . . . | XIX Century, | July 1835 |
| Lord Holland, . . . | XIX Century, | July 1841 |
| Leigh Hunt, . . . . | XIX Century, | Jan. 1841 |
| Ranke on the Popes, . . | Appendix, | Oct. 1840 |

Whoever will read these articles, generally more interesting than a novel, keeping before him any common outline School History of England, for the purpose of keeping right in dates, reigns and principal events, and personages, will master English History in the most charming way, and will have such striking pictures of those events stamped upon his mind, that he can never forget them. Of course, the formal work quoted at the head of this memorandum should also be read at the proper place, after reading the review on Sir James McIntosh's History of the Revolution.

I earnestly recommend this course to my children. To it should be added "Green's History of the Eng-

lish people," and "Molesworth's History of England from 1830 to 1874." (Instead of Molesworth, there is now a more entertaining book—McCarthy's History of Our Own Times.)

For American history, Hildreth's is the most complete, as to the time covered by it. After reading Hildreth, Bancroft's more elaborate work, as recently condensed in six volumes, should be read. Bancroft has taken infinite pains to be accurate, and has altered, added and corrected every successive edition. But his work only comes to the close of the Revolutionary war. (1882. It now embraces the History of the Constitution).

For general history, I still adhere to Tytler; though he must be dull to a young person, and read as a task. However, I know of no other original work comparable to his. There is a pictorial "History of the World," in one large, thick volume, which is very full and complete.

Dr. Russell's Ancient and Modern Europe is very readable and useful.

Of course, no person can claim to be intelligent without reading the great standard works on history which adorn English literature; such as Hume, Robertson and Gibbon. Clarendon and Burnet are complete as to the seventeenth century, Grote, Ferguson, Merivale on Greece and Rome, and Froude on Elizabeth, and Allison on the French Revolution, among English writers, and Prescott, Motley and Irving among Americans; with good translations of Herodotus, Thucydides, Polybius, Livy, Tacitus and Cæsar among the Greeks and Romans; and of Father Paul, Davilo, Sully, Voltaire and Thiers among the Italians

and French. Of course, this enumeration is very incomplete, and does not include many masterpieces which any one laying any claim to scholarship should read and master.

(NOTE.—A good consecutive History of England, elegant and entertaining, will be found by reading successively, 1st, Hume; 2d, Macaulay; 3d, Stanhope (Anne), Mahon (1713–1783), McKnight and McCarthy).

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## CARLYLE'S "FRENCH REVOLUTION."

Carlyle's "French Revolution," is wrongly entitled, "The French Revolution," a "History," it should have been entitled, "The French Revolution," a "Poem"; not because it is a fiction, or a romance in the sense of fiction, but because its whole frame and cast and filling-in are poetical and nothing else. All it wants is the common poetical garb of verse to make it a complete poem in form as well as substance. Look at that incomparable vision described in the fourth chapter of book IV, entitled "The Procession of the States-General." Is there anything more poetic in Homer or Virgil?

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## LELAND ON THE GYPSIES.

SEPTEMBER 12, 1878.

I have just read Leland's "English Gypsies and Their Language," and his article in the *Edinburgh Review* on the same subject. He is about to publish a vocabulary. His conclusions are, that the Gypsies

were originally *pariahs* of the Natt and Dom tribes in the West of India, who were encouraged to emigrate to Persia to furnish amusements to the people, and who, being expelled thence for their thieving propensities, moved westward through Armenia, Syria, Asia Minor, Greece and Hungary, to Western Europe. Here they first appeared in the Hanse Towns A. D. 1417. Their language shows traces of the countries through which they passed, though its groundwork is "Hindustani," or an old cognate dialect coming from the "Sanskrit." Many words are pure "Sanskrit," and they still retain many customs, notions, proverbs and sayings that betray "Sanskrit" or "Hindu" origin. The names "Rom" and "Romany," by which they call themselves, Mr. L. thinks, are derived from "Dom," "Dommany," being a mere corruption of pronunciation, common among them. They call Europeans "Gorgios," which may be a corruption of "Georgi"; the first Christians, perhaps, whom they met in their progress westward. And is not their custom of eating the flesh of animals, which have died a natural death, derived from the institutes of Buddhism, by which the killing of animals is forbidden. Driven to great straits for food, may they not have compromised with a principle inherited from of old and deemed it advisable to eat the flesh which had not been killed, but had died from natural causes? Subsequent intercourse with other nations, it is true, may have caused them to forget the original institute, and to eat meat however killed; but the remaining custom of eating the flesh of animals, dying a natural death, may be indicative of experiences through which they had passed.

## STOWE.

The first settlement in Stowe, Vt., was made by Oliver Luce, April 16, 1794, a mile north of the village, on the west side of the road leading to Morrisville, a little south of the fork made by the road that leads to Morrisville and that which continues northerly.

Oliver Luce was born in Martha's Vineyard, July 5, 1765, and died at Stowe, December 2, 1852. His monument was erected by the town over his grave in the old burying ground. His wife, Susannah, lies buried by his side. She was born at Plainfield, N. H., March 29, 1764, and died August 9, 1826. Their son was the first child born in Stowe. Joseph Fuller, now (1875) 82 years old, residing at Stowe Hollow, informs me that he came to Stowe 1809, twelve years of age. At that time there were only three houses in the village, viz.: a log house at the corner, opposite Squire Butler's, a frame house opposite the hotel, and one further down near the Methodist Church. Four farm lots, of one hundred acres each, originally centered at a common point about thirty feet west of the hotel, thus:

| | |
|---|---|
| 4 | 1 |
| 3 | 2 |

1 and 2 belonged to Dr. Thomas B. Downer; 3, to William Utley; 4, to Nathaniel Russell. Dr. D.'s monument states that he was born at Coventry, Conn., in 1773, and died at Stowe, 1851. His lots embraced the Butler cottage and Sunset Rock, which was called Dr. Downer's ledge. He practised physic at Stowe to the close of his life. When Fuller first came to the place (1809) the grist mill was owned by Asa Raymond, who built it. His tombstone states that he was born at Middlebury, Mass., in 1772, and died in

1843. Several of the early settlers came from that place. Raymond bought out Caleb George, who built the first mill in the lower village, near where Pike's saw-mill now stands. Lemuel Thomas had built and was running the carding and fulling mill in the lower village. Fuller says Capt. Robinson (now 90 years old) came to Stowe before he did. Mrs. Raymond tells me that Asahel Raymond, a cousin of Asa, built the old hotel, near the present hotel, which still forms one of the back buildings; and that the present hotel was built in 1863, an addition being made in 1874 or 1875. Asahel's sons conducted it a while after his death, and then sold out to the Mount Mansfield Hotel Co., got up by Bingham and others. A man by the name of Peter C. Lovejoy built the brick hotel below (now owned by the company), which was afterwards purchased by a Mr. Churchill and converted into a tavern. Churchill formed the design of a road to the top of the mountain, and an auxiliary hotel there, and commenced the work, but, failing in business, his property was sold under mortgage and purchased by the Mt. Mansfield Hotel Company. She says that Bingham (W. H. H.) was brought up by Asa Raymond and studied law with Mr. Butler and became Raymond's executor, who left half of his estate to the Methodist Church, the other half to his wife's relations. Mrs. Raymond's husband was a nephew, and son of William Raymond. Asa left no children. Bingham's mother and Mrs. Bingham's mother (she was Alice Camp) were sisters of Capt. Robinson.

## HISTORY OF WASHINGTON PARK, NEWARK, N. J.

The mistake made by those who claim Washington Park for a market place is in supposing that it was a gift from the Proprietors to the town. It was no such thing. The patent of December 10, 1696, granting to the town the "training place," the "market place," the "watering place," the "burying ground," the "parsonage lands" and "all the streets of the town," was dated thirty years after the settlement of the town, and after all these portions of land had been laid out and set apart by the town people themselves. The Newark settlers bought the land from the Indians with the license of the Proprietors, and laid out the city and outlands to suit themselves. After they had been several years in possession, the Proprietors set up a claim to quit-rents, and denied that the people had any title. The controversy lasted a long time and with great acrimony. Finally, the people, one by one, in order to have no doubt resting on the title of their lands, began to take patents (no quit-rents, however), and as this was an admission, in form, that the title must emanate from the Proprietors, the latter were satisfied to get out of the scrape in that way. Near the end of the century, it was also thought best to have a sweeping patent for the general balance of land that belonged to nobody in particular; and hence the patent of 1696 to trustees named by the town.

This historical review evinces this fact; that the common lands (embraced in the patent) belonged, in truth, to the town, as much after as before, and as much before as after, the grant, and, when not affect-

ing private rights, such as adjacency to streets and highways, the town could dispose of them for such purposes as it saw fit. The action of the town has always been in accordance with this view. The watering place which lay on the south side of Market street between Harrison street and the foot of the hill, and extending nearly to William street, but somewhat gore shaped, being no longer needed for its original use, was left out and finally sold to the tanners of the town for the location of the tanneries; and in that way has contributed immensely to the prosperity of the town. The burying-ground, not being all needed for that purpose, and the north-east corner being a pond, or marsh, and unsuitable for it, the town and church let out lots around the margin, which greatly benefited the appearance of that part of the town, multiplied business facilities, and contributed to the public finances; without any public detriment. The court-house and jail were erected on lots granted to the county along Broad street, south of the old church, which stood about where the engine-house now is, and neat and tasteful stores were erected between the meeting-house and Market street. Nobody was injured; the town was benefited; the public good was furthered. Then the training place, being no longer wanted for that use, as there were hundreds of places in the vicinity much better fitted for it, was converted into a public park, and planted with the beautiful trees that adorn it; first, those grand old elms were planted about the beginning of the present century, and the interior trees were set out in 1838, many of them being brought from Prince's nursery, on Long Island, and

finally, the park was enclosed with an iron fence. Nobody has been injured by it; everybody has been benefited; the beauty of the city and the public good of the town have been subserved. And as the land really belonged to the city, that is, to the town people in common, no man, no court, had a right to interfere with this modified use of it, deleterious to no one, and more subservient to the public interest. The Chancellor would be very prettily engaged, to be sure, in ordering the fence and all the trees to be taken away, and Trinity Church, too, in order that companies of soldiers could have a little better room for evolutions! Then, again, the market place, Washington Park, was deemed to be of more use to the health and beauty of the city by making a public park of it, than by using it for a market. It never has been used for a market for now two hundred and twenty years. The first market that was built for the town was not built on Washington Park, but in Market street, on the margin of the burying-ground, in a low spot where no graves could be dug. It was the only market that the town had for many years. It had a hall above in which meetings were held, and when the old court-house at the corner of Broad and Walnut streets was burnt, the courts were held in the upper part of the old market-house. They were held there in 1835, 1836 and 1837, whilst the present court-house was being built. When this old market became too small, what next? Did the city authorities (the collective representatives of all the town's people) go uptown and take Washington Park for a market place? No. They purchased the present site over the Morris Canal because it was more central and more convenient to the people, and

because Washington Park had been converted into, or rather, had never been used for anything else than a public park, and property had been purchased and residences built around it on the faith of that appropriation. An Academy ("a fine two-story stone building") was erected on it in 1774, which was burnt and destroyed as far as it could be, by the British and Tories in their savage raid of January 25, 1780. From that time to this the planting of trees, the erection of fences, the laying of walks have been in accord with the actual uninterrupted appropriation of this ground to the uses of a public ornamental park, during the entire history of the town. The courts, or the City Council itself, would have no more right, now, to deface it, and convert it into a market place, than they would to sweep away all trees and structures from Military Common, or from the Watering Place. And why? Simply because, upon the faith of the acts and conduct of the town for over two hundred years, rights have grown up which cannot be disregarded and overthrown. The plea that these acts and conduct are in violation of the Patent of 1696 has been already considered. It is based on a false idea, namely, that the public lands, commons and streets of Newark were the free donation of the Proprietors; whereas historic truth is different, and shows that this common property belongs to the town's people themselves, to be disposed of by them for the public good as they deem best, and not to the private injury of the citizens. This is the sound, sensible view of the subject, and law is never found, in the end, to be at war with sound sense and reason.

## TRUTH.

1. *Statement of truth* is brief. Demonstration of truth is long. Confutation of error is both long and arduous.

2. The masters of philosophy, those who propound the great thoughts on which human conduct hinges, are never prolix, never discursive. They are usually sententious, epigrammatic, delivering their lessons in aphorisms, proverbs or parables. They see truth so clearly, and value it so highly, that their principal anxiety is to announce it, and impress it upon mankind. They have not the time or patience to stop and argue.

3. The most solemn and profound truth that man can utter, and which has the greatest influence on his life, is expressed in four words. *There is a God.*

4. All the great lessons of life may be comprehended in a few simple propositions, understood by the simple, whilst the wise are lost in the maze of their own discussions.

5. The true office of discussion is to clear away error and establish truth.

6. Truth is simply *that which is;* error is the affirmation, or belief, of that which is not.

7. That which *is* may be either an existence, or an event. The former *continues;* the latter *happens* and is ended, becoming a thing of the *past.*

8. But existences, as well as events, may belong to the past, the present, or the future; to the natural, or to the spiritual (or moral) world.

9. He who sees through the phenomena of being most clearly, and appreciates that which is most substantial and enduring, most essential and important, has the clearest view of Truth.

## VARIETY OF INTELLECTUAL CAPACITIES.

There is nothing more true than that to different persons the same words suggest different ideas. Words are used by men of all descriptions, characters and habits of association, and the peculiar circumstances of each man go to stamp the complexion of the ideas he attaches to words. Men of genius, who have many more ideas than other men, yet having only the same words to convey them, or represent them which *they* have, must necessarily attach many more ideas to the same term than others do. Some of these ideas are perhaps so evanescent and refined that other men are incapable of comprehending them. It is the prerogative of the man of enlarged capacity and ready wit, to comprehend and enjoy the most delicate and refined touches of sentiment, which the writings of genius contain, as well as the more gross and obvious conceptions of ordinary men.

There is, perhaps, not so much difference between educated minds as is generally estimated. A peculiar kind of talent or tact is required to succeed in the accumulation of wealth, honor and power. Not an extraordinary share of mind. Yet the possession of one or other of these external accidents is one of the commonest principles from which the world judges of the *extent* of a man's capacities. The truth is that every educated mind contains, in itself, a world of wondrous powers and capacities. The principles and springs of humanity, possessed in common by enlightened men, are in themselves an ocean, compared with which the *differences* between them dwindle into insignificance. Like the arms and inlets of the sea, which

compared with each other may seem to present wide disparities, but each, in turn, claims to be connected with, and but a part of the boundless main. So with the differences between men. They may seem great, until we reflect that each is connected with the ocean depths of a common humanity, which, all alike, enjoy. The Andean summits do not all peer above the obscurations of clouds and storms, but all rise far beyond the reach of animate nature. There is so much to admire and venerate in the resources of every immortal spirit that I dare not speak disparaging of any. The humblest son of science has so much in common with the most successful suitor of renown, that I dare not speak of the difference between them as worthy of comparison with the vastness of the mental capacities and resources of either.

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## WILL: SELF-CONTROL.

It is said by some philosophers that "*the will is the man.*" It is this that determines our actions. Our actions determine our characters and destinies. What we *are* is answered by what we *do*. This distinguishes men from each other, the wise and prudent from the unwise and volatile—this distinguishes men from brutes.

The highest office of the will is *self-control*. Brutes are governed by their appetites and impulses. Savages are but little removed in this respect from brutes. Brutish men and coarse natures are mostly led by their impulses, appetites and passions. The true nobility of our nature is evinced by self-control, which restrains, governs and subdues the impulses, appetites, passions and desires.

Self-control, under the names "*Εγκρατεια*" and "*Σωφροσυνγ*" in Greek and *Temperentia*, *Continentia*, *Modestia* in Latin, is ranked as one of the four cardinal virtues, Justice, Temperance, Courage and Fortitude. Of these the parent virtue is temperance, or self-control.

He that best controls himself in all things is most noble and God-like. "He that is slow to anger is better than the mighty, and he that ruleth his spirit than he that taketh a city." (Pro. 16: 32). "He that hath no rule over his own spirit is like a city that is broken down and without walls." (Pro. 25: 28).

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## EXPERIENCE, OR SELF-IMPROVEMENT.

It is the duty and high privilege of every human being to endeavor to improve himself. Effort at self-improvement is the definition sometimes given for religion. It may relate to our actions or to our convictions. In our actions we should aim at goodness; in our convictions, at truth. (This is the essence of the teachings of Confucius).

One of the best means of arriving at just conclusions, or truth, is to record our best thoughts. By clothing them in words we make them more precise, determined and fixed. For this purpose it is a good plan to keep a set of books somewhat analogous to the Journal, Day Book and Ledger of the tradesman. The Journal should be always at hand for recording the first rough form of our thoughts, including the suggestions, reasons and conclusions

which occur to our minds on any subject in which we take an interest, which may thus be caught and secured whilst fresh and before they are dissipated and forgotten, and perhaps forever lost. In certain moods and frames of mind we have glimpses of truth, which, followed out, may lead us to interesting conclusions, but which, once displaced by other things, can never again be recalled—at least, not with the same vividness and strength. The second book, analogous to the Day Book, is to be used for copying out, with abridgements or improvements, such of the rough entries in the Journal as, on subsequent reflection, seem to be worthy of the labor, collecting together under a single head all the observations which we have made on one subject. The third book, analogous to the Ledger, should be employed for a last and final recording, in the most accurate and finished form, of the thoughts and conclusions at which we ultimately arrive on a given subject or point, after having read and re-read the previous entries, and sought such other information and light from books and men as our opportunities have permitted.

By proceeding in this manner, and drawing the pen across the entries in the Journal and Day Book respectively as fast as they are used and carried forward into the succeeding book, a man of ordinary reading and reflection will, in the course of a few years, find that he has amassed a rich fund of experience, which, to him at least, will be of inestimable value. The result will be as near an approach to wisdom and truth as his opportunities and talents are capable of.

## PRINCIPLES SHOULD BE FIXED.

When a young man arrives at the age of twenty he looks around him in the wide world and discovers that opinions, sentiments and principles of action are very various and different. With respect to each subject presented to his consideration, and each course of conduct offered to his choice, he can take but one course, or else he must remain in a wavering, undecided state. Indecision is the bane of healthy conduct. Hence it behooves every one to choose some particular course to pursue with regard to his opinions and systems of conduct as they individually present themselves. And, if, by further investigation, he finds that he has adopted the wrong course, let him choose the right one. In order to make a proper choice of the stand which he will take, much research and reflection will be necessary. Let him, therefore, examine one subject at a time, and having made his decision respecting that, let him go on to the consideration of something else.

For example, let him investigate the subject of Slavery and its influence upon our country, etc., until by a careful comparison of the arguments that each sect and party on the subject of Slavery bring forward, he is able to decide according to the merits of the case what ought to be done in relation to Slavery. Then, having once satisfied himself, he will always be ready with a reason for the opinions, to urge upon those who may differ from him, and if he is ever called upon to *act* in relation to the subject, he will know how to act, and will not act blindly. Truth and utility combined ought to be the object for which we

seek in every investigation. Many have an opinion respecting such subjects, but do not know how they came by it—possibly their father or friends think so—and, therefore, they think so also; possibly their own interest is concerned and biased their judgment; possibly they have latent prejudices that decide them, but whatever it be, unless they have carefully investigated and impartially judged the subject, they are not fitted to converse on it in promiscuous society, nor are they safe in adopting the conduct which their opinions shall at any time dictate.

After having examined and disposed of one subject. let him proceed with another, until the more important of those which are agitated in the society of which he is a member have been canvassed by him.

He will generally be able to find materials and facts to guide his investigations in the publications that the subject elicit and in the perusal of history. With these data and sound sense for his guides, he will generally deviate very little from the road to truth, safety and ultimate honor. (October 17, 1835).

P. S.—I might add a list of subjects on which a young man would do well to decide in the present times. Some follow Abolitionism, Colonization, Consolidation in Policy, Democracy, Intemperance, Benevolent Associations individually, Methods of Education, Religious equality, Extension of Liberty of the Press, Utility of Monopolizing Associations, Lotteries, etc., etc.

## FAMILY HAPPINESS.

How much the happiness of life depends on refinement in taste, and the cultivation of those accomplishments which gives a charm to the domestic circle! If I wished to depict a happy family, I would describe it as one, not only in which general intelligence and virtue prevails, but in which the arts of taste are sufficiently cultivated to be appreciated and enjoyed; in which vocal and instrumental music are practised, and conversation is varied by narration and discussion, and ever improves in expression and tone; in which poetry, painting, sculpture and architecture are subjects of intelligent study and comment; in which the courtesies and amenities of life are never forgotten, and religion and morality are never slightingly mentioned, and in which affection, mutual forebearance and gentleness form the habitual atmosphere. How can anything bad or deformed come from such a source? It is the seat and fountain of social order and goodness; of noble character and honorable achievement.

(1875).

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## HOME, DEFINED.

The English word "Home" cannot be fully defined by a single word or phrase. The following is an attempt at a definition made forty years ago, which I find on the fly leaf of one of my old hymn books.

*Home*, the house and place where a family permanently dwells; where they bring together the comforts they can command, and where their family attachments and memories center.

The language is not precisely accurate, and may be modified thus:

*Home*, the house where a family permanently dwells, collects its comforts, and forms its attachments and memories.

November 14, 1876.

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## HAPPINESS.

*Happiness* is the result of the harmony of all the faculties in their co-existence and operation. It is thus in the animal; it is thus also in the moral nature of man. Discord in the operation of the animal functions produces pain; in the moral, dissatisfaction, mental uneasiness—greater or less in proportion to the disorder that prevails. Perfect health is the perfection of animal nature, and the basis of the greatest physical enjoyment. Perfect harmony of the mental faculties produces contentment, peace of mind, happiness. In this the whole moral nature must combine—the intellect, the affections and passions, and the conscience. If either is disturbed, the man is disturbed. As in the body, if every organ is perfect, except the heart, and that is disordered, the whole system suffers. So in the soul. If every part is in perfect activity except one of the passions, and that is disturbed by undue excitement or improper exercise, the whole man is distressed and unhappy.

The principle is universal and invariable in its application. Like gravity in the physical world, which pervades the universe, and is always felt and only felt when resisted.

A man is most happy when he is most perfect, and he is most perfect when all his faculties are proportionately and harmoniously developed. Thus developed, nature and art and society supply him with a thousand sources of enjoyment. Neither his taste nor his moral feelings, any more than his intellectual faculties, can be neglected without detriment, and without diminishing his enjoyment of existence. The ear should be tuned to harmony, the eye educated to the perception of beauty and grace, and the heart instructed in the precepts of duty and religion ; and these should all be graduated and correlated to each other. With a body well developed and trained to healthy exercise and agreeable recreations, a mind cultivated and stored with useful and various knowledge, an educated taste and a heart formed to love and follow all that is good and generous and exalted, the result is physical and moral health, and the purest and most perfect happiness which the earth affords.

The acquisition of an accurate and easy conversation, of some skill in music, and in pure and healthful diversions, are of great benefit in fitting one for social intercourse, in which one of the greatest sources of pleasure is found.

The active and cheerful performance of every duty, the assumption and discharge of every proper relation in life, are also necessary to the perfection of the man.

Such a man brings with him and spreads around

him, wherever he goes, a glow of cheerfulness and welcome, and the production of happiness in others reacts in multiplying his own.

His home should be the center of this beneficent influence, and from thence it should spread to every portion of the society in which he is known, and which forms the sphere of his activities.

February 11, 1877.

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## TIME.

The immense importance of time in all human affairs and human experience can never be fully appreciated. One man, by order and diligence, may almost be said to command time and become its master. Another, by negligence and procrastination, becomes time's slave, and finds his affairs in confusion, his opportunities lost and his purposes unaccomplished. The former leads fortune by the hand, and partakes her choicest favors. The latter, with weary steps and flagging spirits, finds himself far in the rear of fortune, and the victim of discouragement or despair. This is one instance of the importance of time.

But it affects us in ten thousand ways, and often without any ability on our part to prevent it. It affects men's characters, talents and destinies. In studying closely the laws which govern observations in astronomy, and other professions which require an accurate note of phenomena, it has been discovered in the last half century that every man has what is called a personal equation, which defines his capacity for accurate observation. No man can

instantaneously perceive what passes before his senses, as, for example, the conjunction of two planets, or the first contact of two heavenly bodies. It would seem that this belongs to omniscience alone. And no two men have exactly the same capacity for immediate perception. The difference between them depends on their respective organization of brains, nerves and organs of sense. This equation has been found so important in observations requiring the greatest accuracy as to render it necessary to ascertain by experiment, and to record, the relative personal equations of the different employes of our Coast Survey.

The fraction of a second, which each requires for perception, is measured, and is always deducted from his recorded observations. Wonderful as this discovery is, it is not more wonderful than other things in human experience to which attention has not yet been directed. For example, a certain instant of time (almost infinitesimal, it is true), occurs between the conception of an idea, and for the word which stands for and represents it. The ease and fluency with which one man can express his ideas, and the difficulty, tardiness and hesitation which is experienced by another, depends respectively on the infinitesimal instant, in each case, required for calling up the words which represent their ideas; in other words, they depend upon the rapidity of association which the two men respectively possess. Other circumstances, of course, contribute largely to make up the difference between them. The different degrees of familiarity which they have with the forms of expression, dependent upon their relative culture, education and experience, have much to do with it. One man may have

cultivated the use of language all his life; and the other may have neglected it. But supposing them to be equal in this respect, there will still be all the difference in the world between them in their respective powers of expression and utterance. One will be brilliant, ready and interesting; the other tedious and drawling. The one will hold crowds hanging on his lips with bated breath; the other will disperse them with equal facility.

In all things, time is an essential element. Electricity requires time to execute its effects. Light requires time to traverse the regions of space. Thought requires time to grasp its objects, and time again to clothe them with expression. And he, who, in all things is most nearly the master of time is master of the world.

February 10, 1877.

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## THE TEACHING OF CHILDREN.

In teaching, regard must be had to the faculties possessed by the pupil. In childhood, memory; in youth, the understanding; in mature life, the reason, is the predominating faculty. If either of these is unduly exercised out of season, injury is sustained by the violence, and the powers in condition for exercise are unjustly repressed and never regain their proper tone. Modern school books and methods of teaching often disregard these fundamental principles of our nature. The attempt to teach spelling and etymology, and even natural philosophy at the same time, and in the same lessons, to a child of eight or ten years, is absurd, and

will fail in every direction. The rules of arithmetic, to be properly and usefully learned, must be learned by heart, without attempting to stuff the mind with their reasons. But memory may be aided by mechanical means. Spelling may be fixed in the mind by the chimes of sound, and the harmony of rhythm striking on the drum of the ear. By this means, long columns of words having the same number of syllables, the same accent and a succession of like vowel sounds, will become indelibly fixed on the sensorium so that the slightest deviation in letter or sound will send a repulsive thrill through the nervous system. Rational spelling—that is, spelling by reason and rules—can never compare in practical accuracy with this mechanical spelling printed upon the memory and the brain in childhood.

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## FIT EXPRESSIONS.

Solomon says, "An apple of gold in a cushion of silver, is a word spoken in season." Prov. XXV, 2. The translation of this proverb has had many variations. The "Septuagint" says, "A golden apple in a setting of cornelian, is a sentence well spoken." The Latin Vulgate, "It is apples of gold on beds of silver, when one speaks a word in due season." "Coverdale," "A word spoken in due season, is like apples of gold in a silver dish." "Cranmer," "A word spoken in due season is like apples of gold in a graved work of silver." "The Geneva," "A word spoken in his place is like apples of gold with pictures of silver." "The Bishop," "A word spoken in due season is like apples

of gold in a graved work of silver." "The Authorized," "A word fitly spoken is like apples of gold in pictures (or baskets) of silver." In another passage, Solomon breaks forth in this wise: "A word spoken in due season, how good is it!" Proverbs, XV, 23. Here is an attempt to express an important truth—to wit, the masterly power and beauty of fit expression. The great truths of humanity only require proper enunciation to secure acceptance. No labored proof is necessary. When clothed in exact and appropriate expression, they address themselves to the intuitive consciousness and are recognized. Like a well fitting garment which reveals the graces of the person, and is itself unnoticed, so apt and proper expression carries truth home to the understanding and heart without diverting the fancy. But it must be clear, perfect and free from redundancy. It must also be striking; tame words are unheeded, and leave no impression. The strong, nervous forces of the language are requisite.

A truth sometimes lies on the mind for years before it can find fit utterance, but when at last fitly uttered, it tells. The word then spoken cannot be forgotten. It finds a lodgment in every heart.

This power of fit expression is a wonderful moral force. It moves senates; it moves nations; it moves the world. A mistake is often made by the young in neglecting its cultivation. They cannot duly appreciate its value. Only the experienced can fully do so. They are apt to suppose that the thought, facts, ideas, are the main thing to acquire, and that words will come of themselves. Facts and ideas are essential, but no more so than the power of correct and forcible expression. They are like unemployed capital; like

arms laid up in store, until the power to use and wield them has been acquired. They may benefit their possessor individually, but they give him no power over others until he has learnt the art of communicating them in strong and beautiful language.

An art, it certainly is, requiring for its acquisition careful study and constant exercise; and this study can never be remitted. It is as necessary at fifty as at twenty-five; in a speech to the senate, as in a Sunday school address; but when acquired, how transcendent is its power; how glorious its effects!

This study and constant use are as necessary to a writer as to a speaker. Nothing tells but excellence; nothing is excellent but what is the result of labor.

STOWE, 1877.

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## ELOQUENCE.*

"The impression which every person, whether on the platform or in conversation, makes on his fellows, is the moral resultant, not of what *he says*, but of what he has *grown up to be;* of his manhood, weak or strong, sterling or counterfeit; of a funded but unreckoned influence accumulated unconsciously and spending itself according as the man is deep or shallow, like a reservoir, or like a spout, or an April shower." Prof. Matthews, in "Getting On in the World."

The above observation is so true that the wonder is, it has never been made before. We have approaches to it in such proverbs as "Actions speak louder than

* See Bolingbroke's "Spirit of Patriotism," Works, Vol. IV, p. 224. Ed. 1809. Description of Demosthenes and Cicero.

words," etc. I would make but one alteration in it, namely, by adding the words "so much" after the word "not," so as to read "not so much of what he says, as of what he has grown up to be," etc. An insignificant man may utter words as wise as even Solomon uttered without producing the slightest impression; whilst the same words spoken by one whom we have learned to reverence and look up to, will be drunk in with delight, and produce a lasting influence upon our lives. The one is not preceded by any preparation on our part to appreciate him; whilst the character of the other has already made a lodgment in our minds which disposes us to pay the strictest attention to his speech, and to give it the fullest effect. It is in us, not in the speaker, that the cause of the difference of impression lies. The effective speaker has already, by his previous reputation, affected us in his favor. We listen to him as a master, because we have come to regard him as such beforehand. This weight of character which thus fills out and gives due effect to a man's utterances, may be partially, though but partially, supplied by the favorable presumptions which arise from his appearance, air and manner, which presuppose, or give reason to presuppose, those characteristics which command our confidence, when we know, or believe them to exist.

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## STYLE.

The perfection of style consists in the use of the exact speech necessary to convey the sense in the fewest words consistent with perspicuity, at the same time having regard to appropriateness and harmony

of expression. Its greater excellencies are directness, accuracy, appropriateness and perspicuity. When these qualities are accomplished with a clear and well modulated enunciation, the thoughts of the speaker go straight to the understanding of his hearers, keep their attention fixed, and leave no time for inclination to wander, criticise, or even to notice the manner in which they are conveyed. The desired effect necessarily follows, whether it be conviction or the excitement of the emotions or passions. When mind speaks directly to mind, spirit to spirit, it gives to the communication the greatest possible power. Redundancy, circumlocution, inappropriate diction, cloud the senses, divert the attention, produce weariness and deprive the effort of any useful effect.

In a public speaker, besides the above qualities of style, fluency is also necessary, by which I mean the power of readily calling up the exact words which the style requires. When these excellencies are all combined and the thoughts are vigorous and impressive, the effect is irresistible. The mind is carried along, as with a whirlwind to the point which the speaker desires.

This talent of effective speaking was possessed in an eminent degree by Lord Bacon, by Vice-President Burr, and by Mr. Judah P. Benjamin. The secret lies, not in fluency merely, but also in the exact and appropriate selection of words and phrases to convey the whole sense and nothing more. Of course the thoughts must be worthy of the occasion.

> "When Atreus' son harangued the listening train,
> Just was his sense, and his expression plain,
> His words succinct, yet full without a fault,
> He spoke no more than just the thing he ought."
>
> *Pope's Iliad, III, 275.*

August 21, 1879. (STOWE).

## METAPHYSICS.

"He knows what's what, and that's as high as metaphysic's wit can fly."—*Hudibras.*

*Metaphysics.* Metaphysical writers do not seem to me to be exact enough in their accounts of the *Human Mind. Locke* refers the origin of all our ideas to *Sensation* and *Reflection.* Stewart, meaning the same things, to *Perception* and Consciousness. They tell us that the mind is conversant about no other ideas than what these two sources furnish. But is it so? Let us see. We have a knowledge of eternal things by *perception*, and a knowledge of *Perception* by consciousness. Thus one faculty of the mind contemplates the load-stone, and is itself immediately reviewed by another faculty of the mind. Now, in contemplating the load-stone, we cannot expect that we are acquainted with all its properties, or know all about it, and so, by analogy, we would immediately be led to suppose that in contemplating the power by which we perceived the load-stone, I would rather say the act of the mind in perceiving the load-stone, we are unable to grasp all the properties that appertain to that act. By consciousness we know there was a battle at Bunker's Hill; perhaps we know the number of killed and wounded, yet ten thousand little circumstances of valor and distress, which we have every reason to believe happened to individuals in that battle are known nothing of. I say by *analogy* we would be led to suppose that many things appertaining to the operations of the mind wholly escape our observation or elude the grasp of consciousness. But I think that

we have more than analogy to support this. When I have stood on a mountain and witnessed the setting of a calm summer's sun—the waters irradiating different parts of the wide landscape, and the fields, some yellow, some green, some brown, checkering the view like a rich carpet of nature; the gently nodding trees, the songs of evening birds, the lowing of cattle in the distance, and the bleating of flocks, all conspiring to enchantment, my emotions for a brief hour have been *indescribable*, and, in any other circumstances, *inconceivable*. My spirit so rapt, my enjoyment so exquisite, my thoughts so sublimated, that I would give myself up to the torrent flow of those intoxicating ideas. At such times I am sure that I have passed many minutes without a thought of watching the operations of my mind or emotions—my mind? That was quite absorbed in drinking delight from the exhilarating draught, and after the spell had passed away, I had but a faint idea, an indistinct recollection of the enchanting dream. I did not make the attempt to grasp the feelings of my mind, or to watch them by the power of consciousness. I had no time to watch the workings of my mind. So completely absorbed was I in *feeling* the enjoyment of the scene, that I had no opportunity of *watching* that *feeling*. I afterwards knew in general, that I had *felt*, and that I had felt indescribable—nay—almost inconceivable sensations. But to endeavor, then, to get up such a conception of those sensations from the scattered fragments of consciousness which I *did* exercise at the time, would have been as vain as an attempt to cut a robe from the sky and trim it with the rainbow. And yet, in the case both of *perceiving* the load-stone

and of *feeling* the delights of the evening scenery, every modification, quality and property of such perception and of such feeling; in short, every mental circumstance by which they were attended, was an *idea* of the mind, however many of them may have escaped the notice of consciousness, and many of them, in my opinion, did so escape. If so, then we certainly have ideas which do not owe their origin immediately to perception or consciousness. As there are many external objects which we do not perceive, so there are many internal workings of the mind of which we may not be conscious. If we say that we have no ideas except what we perceive, or are conscious of, we make the perception or consciousness of our idea necessary to its existence, which I do not believe.

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## UPHAM ON THE MIND AND ITS DISORDERS.

Professor Upham, in his treatise on "Imperfect and Disordered Mental Action," arranges his subject according to the analysis of the mind in its natural state and operations—considering, in order, the imperfections and diseases which affect each faculty.

His classification of mental operations coincides in the main, with the old division of the mental capacities, into the *understanding*, the *affections* and the *will*. The nomenclature which he adopts is *intellect*, *sensibilities* and *will*. The intellect he subdivides into exterior and interior, corresponding, in most respects, with Locke's division into sensation and reflection. The exterior intellect derives knowledge from the outward world through the medium of the senses; the interior derives it from a consciousness of the mind's own operations, from original suggestion, *relative*

*suggestion* or *judgment*, and reasoning. To *original suggestion*, he assigns the origin of our notions of *time*, *number*, *motion*, *memory*, *sameness*, *personal identity*, *present existence*, etc., which Stewart, after Dr. Reid, attributes to common sense.

Now, it seems to me that a more simple analysis may be made of the operations of the mind. I find no fault with the general division into understanding, affections and will. The mental operations, or states indicated by these three designations, are entirely distinct in their nature, and seem to comprehend all of which the human mind is capable. We *perceive* things, facts, truths. This is the operation of the understanding; and is a matter of pure intellection. We can conceive of beings purely intellectual, who might be endowed with this capacity, without being subject to any emotions or affections. But we are differently constituted. We are also *affected* by our perceptions. Hence the *affections or sensibilities*, which form a distinct and component part of our mental structure. The understanding and the affections constitute us perceptive and passive or affective beings. We are thus rendered capable of *knowledge* and *emotion*. But our nature does not end here. We are not only perceptive and passive, but *active*. We are capable not only of *knowledge* and *emotion*, but of volition. We not only understand and feel, but we *will*. Hence the third and last great division of mental operations—the *will*.

When we come to subdivide the operations of the understanding, it seems to me that the perception of the ideas of time, space, number, motion, etc., belongs to precisely the same category as the perception of outward objects does. It is true we do not perceive

these things immediately by one of the five external senses, but there is a *sixth sense* by which we *do* perceive them. *They belong to the framework and constitution of this outward world into which our Maker has placed us*, and I consider the formation in the mind of a comprehension of this outer world and the things *therein contained, of its constitution, its manner of existence, as a source of knowledge, homogeneous in its character, and appreciable by a department of the understanding which is one and indivisible.* Call this the exterior intellect if you will. Names are not things, but I think the *understanding* is a better word to denote the power or capacity of the mind to comprehend the world as it is, nature, or the exterior universe, than any other that can be chosen.

There is an exterior or more transcendental intellect, I admit, which is cognizant of ideas that the senses do not reveal, and that the outer world does not even suggest. Those ideas are the spiritual ones on which our moral nature depends—such as justice, purity, faith, sincerity, generosity, or, perhaps, personal identity, present existence, etc., belong to this class.

(Memo.—Think further on this subject.)

I think Prof. Upham's arrangement of the subject of mental disorder very philosophical and correct. Disorder is the correlative of order in all departments of nature and life. The physician considers the human system under three aspects—that of physiology, pathology and therapeutics. The lawyer divides his science into rights, wrongs and remedies. The divine treats of religion under the heads of holiness, sin and redemption. In like manner, the true division of mental philosophy is into mental physiology, pathology and treatment of the insane, etc., etc., etc.

## THE HUMAN MIND.

The mind of man may be compared to a bird ascending with her eye fixed upon the sun. Her light form is successively borne in contrary directions by the shifting winds as she passes onward and upward through the various strata of the atmosphere. So, the mind, as it rises in its progress toward fixed and eternal truth, the centre and ultimate object of all its inquiries, is, at first, borne along with the various prejudices and opinions of the world, often in conflict with each other. At one stage of its progress, it adopts notions and views that are often modified or entirely changed by more information, or an acquaintance with new or more plausible expositions, and it is only when it acquires sufficient strength and courage to mount above the floating current of popular thoughts, and out of the reach of the breath of public opinion, that it can pursue, with eagle speed and unflinching eye, that straight and luminous path which leads to the pure and immutable sources of intellectual and moral perfection.

The general influence which the several sciences naturally exert upon each other, is a truth too commonly known to merit a remark here. But some of the particular instances of this influence are striking and worthy of a passing notice. I was lately forcibly struck with the influence of the discovery of the art of making paper in the eleventh century, and the art of painting in the fifteenth century, on all the departments of literature and science. There had been giant minds in the darkest ages, but their wisdom could never be

recorded—perhaps they themselves were ignorant of letters, and so all died with them that might have benefited and enlightened the world.

May we not also compare a man's individual mind to the literary and scientific mind. A man may be possessed of a large and capacious mind, may start many brilliant thoughts, and give great promise of becoming useful and great, but if he suffers his mind to rest on its own extemporaneous energies—never exerting himself to store his memory with formulæ of truth—that man will be like the dark ages. His startling thoughts will be lost in the flux of events—he makes no progress in the net amount of knowledge at his command, but as fast as he receives knowledge, he negligently permits it to pass out of his mind. This, I fear, is in some measure the case with ———.

September 9, 1837.

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## THE ENGLISH GUTTURAL Ŭ, AS HEARD IN BŬT, HŬT.

To show the proclivity of English-speaking people to drop into this guttural, the following sentence will show every vowel pronounced in that way:

"The Editor will insert the burning of the Martyrs in his next circular."

Here we have *ar er ir or ur* and *yr*, all pronounced in the same way; and indeed, it is almost impossible for an English speaker to pronounce *er* or *ir* otherwise than if spelled ŭr. And yet we have great difficulty in learning to pronounce the German ö, as in Gœthe, although it has nearly the same sound as the English

short u, though more prolonged. One not accustomed to German, would come very near to the true pronunciation of ö in Gœthe, if he should pronounce it as though it were spelled Gurty, leaving out the sound of r. The difficulty is in prolonging the sound sufficiently to give it the true German effect. With us the sound is always, or generally, short. We give it greater length in *hurt* and *worth* than we do in *put* and *but*. Accustoming ourselves to uttering the long sound without pronouncing the r, we could soon very nearly acquire the German ö.

December, 1880.

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## ER, BY, NEAH.

*Er* and *Ere* is the Saxon termination from *wer*, *were*, a man, equivalent to the German pronoun *er*, *he*. As a termination, it signifies an agent, or actor. Thus, bake, baker; dig, digger; sing, singer; train, trainer, etc., meaning respectively a man who bakes, digs, sings, trains, etc., as much as to say, bake-man, dig-man, sing-man, train-man, etc. We naturally and almost unconsciously add this termination when we wish to express the actor who does anything; thus, we naturally say dynamiter, photographer, when we wish to denote a person who uses the new substance dynamite, or who performs the new process of photographing.

By, Bye, is the Danish for town, village, etc. Hence in that part of England where the Danes settled, we find plenty of towns ending with that termination, as Wetherby, Thirkleby, Selby; in Yorkshire, Derby, Denby; in Derbyshire, and perhaps a hundred places

in Lincolnshire, the local map being filled with them. It may come from *Bya*, *Byan*, to inhabit, or from *Bi*, near, in the vicinity of. For, as the people lived in towns, or vills, those who were collected together, *Bi* each other, always made a vill.

*Neah*, Anglo-Saxon for near. Neah-bi-er would be the near-by-man, hence, our word, "neighbor."

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## FREEDOM OF THOUGHT.

In scientific and historical, especially archæological investigations, the mind should be free from all bias and open to the reception of truth and the exact result of the evidence presented, no matter what idols are overthrown by it. "Bacon," in his Novum Organum (B. L. XXXIX-XLIV), says there are four species of idols which beset the human mind—Idols of the tribe, Idols of the Den, Idols of the Market and Idols of the Theatre. 1. Idols of the Tribe are inherent in human nature, and the very tribe or race of man—the tendency to look at all things from the central stand point of self and the senses. 2. Idols of the Den are the peculiar mental obliquities of the individual, arising from his disposition, education and circumstances. 3. Idols of the Market are those erroneous impressions derived from intercourse with other men, from the loose conceptions attached to words and common speech. 4. Idols of the Theatre are the dogmas and theories of sects and parties in religion and philosophy which attract us, or fetter the operations of our minds. The influence of these Idols constantly operates to cloud the understanding and to

shut out the rays of truth. If the remains of a human being are found in a geological stratum, or locality which indicates the lapse of many ages since that being lived, and if those remains show a low type, pointing to a great intermediate development of the race, the whole religious world, frightened at the bearing the discovery may have on the accuracy of the book of Genesis, bears down upon the obvious deductions of the evidence, with indiscriminate and blind denunciation. But the man of true scientific instincts will regard this commotion with contempt, and will give full play to his reason, and accept the teachings which the dicovery suggest. He will not shut his eyes to the evident facts, but will regard them with fairness and candor, as if the book of Genesis had never been written. This freedom of thought is repulsive to ninety-nine hundredths of men, because it sets at naught their cherished opinions, prejudices or dogmas.

Freedom of thought was the great object for which Spinoza contended, and many other great men.

# ASTRONOMICAL,

# SCIENTIFIC

AND

# MATHEMATICAL.

## †LETTER OF HON. JOSEPH P. BRADLEY,

### ONE OF THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES, GIVING A HISTORY OF THE FIRST STEAM ENGINE INTRODUCED INTO THE UNITED STATES OF AMERICA.

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WASHINGTON, September 20th, 1875.

DAVID M. MEEKER, Esq.

DEAR SIR: The steam engine of which you possess a relic* was, as you suppose, the first ever erected on this continent. It was imported from England in the year 1753, by Col. John Schuyler, for the purpose of pumping water from his copper mine opposite Belleville, near Newark, New Jersey. The mine was rich in ore, but had been worked as deep as hand and horse power could clear it of water. Col. Schuyler, having heard of the success with which steam engines (then called fire engines) were used in the mines of Cornwall, determined to have one in his mine. He accordingly requested his London correspondents to procure an engine, and to send out with it an engineer capable of putting it up and in operation. This was done in the year named, and Josiah Hornblower, a young man, then in his twenty-fifth year, was sent out to superintend it. The voyage was a long and perilous one. Mr. Hornblower expected to return as soon as the engine was in successful operation. But the proprietor induced him to remain, and in the course of a couple

† An enlarged photograph of this letter exhibited at the Centennial Exposition at Philadelphia in 1876, is now deposited with the New Jersey Historical Society in Newark, N. J.

* Deposited in the "National Museum," Washington, D. C.

of years he married Miss Kingsland, whose father owned a large plantation adjoining that of Col. Schuyler. The late Chief Justice Hornblower was the youngest of a large family of children which resulted from this marriage. Mr. Hornblower's father, whose name was Joseph, had been engaged in the business of constructing engines in Cornwall from their first introduction in the mines there, about 1740; and had been an engineer and engine builder from the first use of steam engines in the arts, about 1720. The engines constructed by him and his sons were the kind known as Newcomen's engines, or Cornish engines. That brought to America by Josiah was of this description. Watt had not then invented his separate condenser, nor the use of high pressure. But it is generally conceded that, for pumping purposes, the Cornish engine has still no superior.

After 1760 the Schuyler mine was worked for several years by Mr. Hornblower himself. The approach of the war, in 1775, caused the operations to cease. Work was resumed, however, in 1792, and was carried on for several years by successive parties. It finally ceased altogether early in this century, and the old engine was broken up and the materials disposed of. The boiler, a large copper cylinder, standing upright, eight or ten feet high, and as much in diameter, with a flat bottom and a dome-shaped top, was carried to Philadelphia. The relic in your possession was a portion of the cylinder, and was purchased by some person in Newark.

In 1864, I met an old man named John Van Emburgh, then a hundred years old, who had worked on the engine when it was in operation in 1792. He described it very minutely and, I doubt not, accurately.

It is from his description that I happened to know the kind of engine it was; although from the date of its construction, and the use to which it was put, there could have been but little doubt on the subject.

What changes have been wrought in one hundred and twenty-two years! What mighty power has been created on this continent, in that time, by the multiplication and improvement of the steam engine! We may well look upon this relic with a sort of superstitious veneration, and looking forward as well as backward, wonder what another century will bring forth.

Respectfully, your obedient servant,

(Signed) JOSEPH P. BRADLEY.

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## EASTER DAY AND COURT TERMS.

Easter Day is the first Sunday *after* the first full moon that happens after or upon the 21st day of March, vernal equinox. Easter Day cannot possibly happen earlier than the 22d of March, nor later than the 26th of April.

*Lent* is a solemn fast of the English and Roman churches, called Lent because it is in the spring, that being the Saxon name for spring. It is composed of forty week days, immediately preceding easter, Sundays not being reckoned fast days because they are commemorative of our Saviour's resurrection. Hence Lent begins on Wednesday, six whole weeks and four days before Easter. This is called Ash Wednesday. On that day they formerly wore sack-cloth and ashes, hence its name. It can never happen earlier than the 4th day of February, nor later than the 11th of March. The first Sunday before Lent, being the seventh

before Easter, is called Quinguagesima, being the fiftieth day before Easter inclusive. The Sabbath preceding that is called Sexagesima, and the preceding one, Septuagesima.

The fortieth day after Easter inclusive is called Ascension Day, coming always on Thursday. The fiftieth day inclusive—the old Pentecost—is called Whit Sunday, or White Sunday, because catechumens on the eve of that day were admitted to the Sacrament of Baptism clothed in white robes. The Sunday after White Sunday, being eight weeks after Easter, is *Trinity Sunday*, which can never happen earlier than the 17th of May, or later than the 21st of June.

Now, the *Easter Term* always commences on the Wednesday fortnight after Easter (which is never earlier than the 8th of April, nor later than the 13th of May), and continues till the Monday three weeks after beginning (which is never earlier than 4th May, nor later than 8th June), being in all twenty-seven days, Sundays included, or twenty-three days besides the Sundays.

*The Trinity Term* always commences on the Friday after Trinity Sunday (which cannot be earlier than 22d May, nor later than 26th June), and continues till Wednesday fortnight after it begins (which is never earlier then 10th June, nor later than 15th July), being in all twenty days, Sundays included, or seventeen days besides the Sundays.

*The Michaelmas Term* always commences on the 6th of November and continues to the 28th of that month, being in all twenty-three days.

*The Hilary Term* always commences on the 23d of January and continues to the 12th of February, being in all twenty-one days.

# PERPETUAL CALENDAR

## FOR FINDING THE DAY OF THE WEEK ON WHICH ANY DAY OF ANY MONTH FALLS IN ANY YEAR BEFORE OR AFTER CHRIST, OLD STYLE OR NEW.

| Centuries—Old Style or Julian. B.C. | A. D. | | | Jan Oct | Apr July | Sep Dec | Jun | Feb Mar Nov | Aug | May | Centuries—New Style. A. D. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | | | | |
| | | | | 8 | 9 | 10 | 11 | 12 | 13 | 14 | | | | |
| | | | | 15 | 16 | 17 | 18 | 19 | 20 | 21 | | | | |
| | | | | 22 | 23 | 24 | 25 | 26 | 27 | 28 | | | | |
| | | | | 29 | 30 | 31 | | | | | | | | |
| 7 | 1 | 8 | 15 | Sat | Sun | Mo | Tue | Wed | Thu | Fri | ... | 18 | 22 | 26 |
| 6 | 2 | 9 | 16 | Fri | Sat | Sun | Mo | Tue | Wed | Thu | ... | ... | ... | ... |
| 5 | 3 | 10 | 17 | Thu | Fri | Sat | Sun | Mo | Tue | Wed | ... | 19 | 23 | 27 |
| 4 | 4 | 11 | 18 | Wed | Thu | Fri | Sat | Sun | Mo | Tue | ... | ... | ... | ... |
| 3 | 5 | 12 | 19 | Tue | Wed | Thu | Fri | Sat | Sun | Mo | 16 | 20 | 24 | 28 |
| 2 | 6 | 13 | 20 | Mo | Tue | Wed | Thu | Fri | Sat | Sun | 17 | 21 | 25 | 29 |
| 1 | 7 | 14 | 21 | Sun | Mo | Tue | Wed | Thu | Fri | Sat | ... | ... | ... | ... |

| Years of the Century. | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 4 | 5 | 6 |
| 7 | 8 | 8 | 9 | 10 | 11 | 12 |
| 12 | 13 | 14 | 15 | 16 | 16 | 17 |
| 18 | 19 | 20 | 20 | 21 | 22 | 23 |
| 24 | 24 | 25 | 26 | 27 | 28 | 28 |
| 29 | 30 | 31 | 32 | 32 | 33 | 34 |
| 35 | 36 | 36 | 37 | 38 | 39 | 40 |
| 40 | 41 | 42 | 43 | 44 | 44 | 45 |
| 46 | 47 | 48 | 48 | 49 | 50 | 51 |
| 52 | 52 | 53 | 54 | 55 | 56 | 56 |
| 57 | 58 | 59 | 60 | 60 | 61 | 62 |
| 63 | 64 | 64 | 65 | 66 | 67 | 68 |
| 68 | 69 | 70 | 71 | 72 | 72 | 73 |
| 74 | 75 | 76 | 76 | 77 | 78 | 79 |
| 80 | 80 | 81 | 82 | 83 | 84 | 84 |
| 85 | 86 | 87 | 88 | 88 | 89 | 90 |
| 91 | 92 | 92 | 93 | 94 | 95 | 96 |
| 96 | 97 | 98 | 99 | 100 | 100 | |

N. B.—Leap years being inserted twice, the first number is used when the given date is in January or February; the second for the other months.

**EXPLANATION OF THE CALENDAR.**

The days of the different months, as given above, fall, in any year, on the week-day found opposite the century (Old or New Style) in which the year occurs, and over the year thereof. The line of week-days in which that day is found under any month (with the month-day numbers above) forms the entire Calendar for that month and year.

EXAMPLE 1. To find the day of the week for July 4th, 1881. Opposite Century 19, New Style, and over year 81, is *Saturday*. Therefore, July 2d is Saturday; and the line of week-days in which Saturday falls under July (which is the second line), with the days of the month above, constitutes the entire Calendar for July, 1881, according to which the 4th falls on Monday.

EXAMPLE 2. To find the day of the week on which Columbus discovered America, October 12, 1492, Old Style. Opposite Century 15, Old Style, and over 92 in black letter (it being leap year), is *Monday*. Therefore, October 8th was Monday; and the line of week-days in which Monday falls under Mondays (which is the sixth), with the days of the month above, constitutes the entire Calendar for October, 1492, Old Style, and the 12th, as seen falls on Friday.

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# TABLE

## FOR FINDING MEAN TIME OF NEW MOON FOR ANY MONTH AND YEAR IN A PERIOD OF THIRTY CENTURIES.

| B. C | D. | H. | M. |
|---|---|---|---|
| 800 | 7 | 18 | 31 |
| 700 | 12 | 2 | 55 |
| 600 | 16 | 11 | 19 |
| 500 | 20 | 19 | 42 |
| 400 | 25 | 4 | 4 |
| 300 | 29 | 12 | 26 |
| 200 | 4 | 8 | 3 |
| 100 | 8 | 16 | 23 |
| **A. D. O. S** | | | |
| 1 | 13 | 0 | 43 |
| 101 | 17 | 9 | 2 |
| 201 | 21 | 17 | 21 |
| 301 | 26 | 1 | 38 |
| 401 | 30 | 9 | 55 |
| 501 | 5 | 5 | 28 |
| 601 | 9 | 13 | 44 |
| 701 | 13 | 21 | 59 |
| 801 | 18 | 6 | 13 |
| 901 | 22 | 14 | 27 |
| 1001 | 26 | 22 | 40 |
| 1101 | 1 | 18 | 8 |
| 1201 | 6 | 2 | 20 |
| 1301 | 10 | 10 | 31 |
| 1401 | 14 | 18 | 41 |
| 1501 | 19 | 2 | 51 |
| 1601 | 23 | 10 | 59 |
| 1701 | 27 | 19 | 8 |
| **A. D. N. S.** | | | |
| 1501 | 29 | 2 | 51 |
| 1601 | 8 | 22 | 15 |
| 1701 | 9 | 6 | 24 |
| 1801 | 14 | 14 | 31 |
| 1901 | 19 | 22 | 38 |
| 2001 | 24 | 6 | 47 |
| 2101 | 29 | 14 | 54 |

Years of each century arranged in Metonic Cycles of 19 years each.

| I. | II. | III. | IV. | V. | VI. |
|---|---|---|---|---|---|
| 1 | 20 | 39 | 58 | 77 | 96 |
| 2 | 21 | 40 | 59 | 78 | 97 |
| 3 | 22 | 41 | 60 | 79 | 98 |
| 4 | 23 | 42 | 61 | 80 | 99 |
| 5 | 24 | 43 | 62 | 81 | 100 |
| 6 | 25 | 44 | 63 | 82 | ... |
| 7 | 26 | 45 | 64 | 83 | ... |
| 8 | 27 | 46 | 65 | 84 | ... |
| 9 | 28 | 47 | 66 | 85 | ... |
| 10 | 29 | 48 | 67 | 86 | ... |
| 11 | 30 | 49 | 68 | 87 | ... |
| 12 | 31 | 50 | 69 | 88 | ... |
| 13 | 32 | 51 | 70 | 89 | ... |
| 14 | 33 | 52 | 71 | 90 | ... |
| 15 | 34 | 53 | 72 | 91 | ... |
| 16 | 35 | 54 | 73 | 92 | ... |
| 17 | 36 | 55 | 74 | 93 | ... |
| 18 | 37 | 56 | 75 | 94 | ... |
| 19 | 38 | 57 | 76 | 95 | ... |

Moon's advance in each year.

| D. | H | M. |
|---|---|---|
| 0 | 0 | 0 |
| 18 | 21 | 33 |
| 8 | 6 | 21 |
| 27 | 3 | 54 |
| 15 | 12 | 42 |
| 4 | 21 | 31 |
| 23 | 19 | 4 |
| 13 | 3 | 52 |
| 1 | 12 | 41 |
| 20 | 10 | 13 |
| 9 | 19 | 2 |
| 28 | 16 | 34 |
| 17 | 1 | 23 |
| 6 | 10 | 12 |
| 25 | 7 | 44 |
| 14 | 16 | 33 |
| 3 | 1 | 21 |
| 21 | 22 | 54 |
| 11 | 7 | 43 |

Moon's retardation in each month, except March, in which it advances.

| | D | H. | M. |
|---|---|---|---|
| Jan. | 0 | 0 | 0 |
| Feb. | 1 | 11 | 16 |
| Mar. | + | 1 | 28 |
| Apr. | 1 | 9 | 48 |
| May | 1 | 21 | 4 |
| June | 3 | 8 | 20 |
| July | 3 | 19 | 36 |
| Aug. | 5 | 6 | 52 |
| Sep. | 6 | 18 | 8 |
| Oct. | 7 | 5 | 24 |
| Nov. | 8 | 16 | 40 |
| Dec. | 9 | 3 | 55 |

In Leap-year, retardation 1 day more after February.

### CORRECTION.

| | | H. | M. |
|---|---|---|---|
| Cycle II. | Bissextile . . . | +16 | 31 |
| | 1, 2, 3 after Bis. | — 7 | 29 |
| III. | Bis. & 3 after Bis. | + 9 | 2 |
| | 1, 2 after Bis. . | —14 | 58 |
| IV. | Bis. & 2, 3 after Bis. | + 1 | 34 |
| | 1 after Bis. . . | —22 | 26 |
| V. | All years . . . | — 5 | 55 |
| VI. | Bissextile . . . | +10 | 36 |
| | 1, 2, 3 after Bis. | —13 | 24 |

N. B. Columns 2, 3, 4 show the first New Moon in the century, in January; 11, 12, 13 show Moon's advance in each year; 15, 16, 17 show Moon's retardation in each month. Corrections for irregularities of Moon's motion would not vary the result 12 hours either way. Time: Washington—reckoned from midnight.

DIRECTIONS.—Add together time of Centurial New Moon and Moon's advance for the year, applying correction; deduct retardation for the month, adding a lunation (29d. 12h. 44m.) if necessary; or casting out a lunation if the result exceeds the number of days in the month; the remainder will be the time of mean New Moon for the month required. For mean Full Moon, add or subtract half a lunation (14d. 18h. 22m.) EXAMPLE: Required mean New Moon for October, 1879. Here, Centurial New Moon for 1801 N. S. is 14d. 14h. 31m.; Moon's advance for 79, 8d. 6h. 21m.: sum, 22d. 20h. 52m. Correction for Cycle V.,—5h. 55m.; remainder, 22d. 14. 57m. Retardation for October, 7d. 5h. 24m.; which deducted, leaves 15d. 9h. 33m. That is, Mean New Moon October 15, at 9h. 33m. A.M.

## THE NEW CALENDAR PROPOSED.

[From *The Nation* of April 29, 1875.]

The National Academy of Sciences has just concluded its April meeting in Washington, which was held at the Smithsonian Institution, under the presidency of Professor Henry. The attendance was not large, either of members or of the public, but a respectable number of papers were read, of which a very full report has been given by the *Tribune*. Of the more strictly scientific papers that of Professor Loomis of Yale College on the results to be reached from a discussion of the signal service maps, and Professor Langley's account of Solar phenomena observed at Allegheny Observatory, were of most general interest whilst President Barnard's Report for the Committee on Weights, Measures and Coinage, and Mr. Justice Bradley's (of the Supreme Court) proposal for a reform of the Gregorian Calendar, referred most directly to practical questions. The reform of the calendar has been somewhat fully discussed lately, and a bill setting forth that "the Gregorian year pays no proper respect to the cardinal points in the earth's orbit," and proposing to secure such respect, was laid before the House of Representatives at its last session. Mr. Justice Bradley's plan proposes to fix the beginning of the year at the winter solstice (December 21) and to divide it into four unequal parts of 90, 93, 93 and 89 days. In leap years the last part is to have 90 days. In the remarks on this paper a much better plan was mentioned, which had been previously discussed by the Philosophical Society of Washington. This was to begin the year with 21st December, and

to divide it into six parts of two months each, each part to have sixty-one days in leap years, and the last part to have but sixty days in common years.

The scheme would be somewhat as follows for a common year of both systems:

| | Jan. | Feb. | Mch. | Apl. | May | Jun. | July | Aug. | Sep. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Gregorian | 31 | 28 | 31 | 30 | 31 | 30 | 31 | 31 | 30 | 31 | 30 | 31 |
| Ideal | 31 | 30 | 31 | 30 | 31 | 30 | 31 | 30 | 30 | 31 | 30 | 30 |

Thus, only February, August and December would be altered by this ingenious plan, which is due to Mr. E. B. Elliott, the statistician.

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[From *The Nation*, May 13, 1875].

An esteemed correspondent writes us from Washington: "In noticing Mr. Justice Bradley's proposed arrangement of the calendar, you did not explain the manner in which, by his plan, the year would be divided into four quarters of three months each, exactly corresponding with the four natural divisions of the year made by the sun's arrival at the two equinoxes and two solstices. Thus, beginning at the winter solstice, when the sun is at the extreme southerly point reached by him, where he commences his return to the north, Judge Bradley would place the new year, or January 1st, on the present 21st day of December. Then giving to January, February and March each thirty days, the 1st of April, or beginning of the second quarter, will, in common years, fall on the 21st of March, and in leap year, on the 20th of March, or exactly at the vernal equinox, when the sun is on the equinoctial line and the days and nights are equal. Then, giving to the next six months, each thirty-one

days, the 1st of July, or the beginning of the third quarter will fall in common years on the present 22d of June, and in leap years on the 21st, which is the summer solstice, when the sun is at his farthest point north, and the days are longest; and the 1st of October, or beginning of the fourth quarter, will fall in common years on the 23d September, and in leap years on the 22d, which is the autumnal equinox, when the sun recrosses the line and the days and nights are equal again. Then giving to October and November each thirty days, and to December twenty-nine in common years and thirty in leap years, the 1st of January will again fall on the present 21st of December in all cases. This allotment of days to each month is easy to remember; is as convenient as any, and makes them correspond to the great natural phenomena of the sun's annual circuit. It is a lesson in astronomy in itself, and is generally approved as the best plan that has been proposed. The placing of the intercalary day of leap year at the end of the year would be a great advantage in all astronomical calculations and arrangements of the calendar. And the conformity of the entire civil year to the natural year would, of course, be an advantage amply sufficient to compensate for any temporary inconvenience arising from the change. No alteration in the recurrence of leap years from the arrangement of the Gregorian Calendar is proposed. That is sufficiently accurate for many centuries to come. The law prepared by Judge Bradley to effect the proposed change, and which was read to the National Academy of Science, is extremely simple and comprehensive, and would obviate all inconveniences of a business character that could possibly arise.

## NEW CALENDAR PROPOSED.

WASHINGTON, April 17, 1875.

J. E. HILLGARD, Esq.

DEAR SIR: Allow me to recur to the subject of a natural and a scientific year. This year ought to correspond with the natural Solar year. In the northern hemisphere the natural commencement of the year is at the time of the sun's station in the winter solstice. Then he commences his return to warm and vivify the world and reclothe it with vegetation. Every rustic, by noting the sun mark in his doorway, can tell when the old year ends and the new begins.

The average time of the winter solstice is December 22d, at 1 A. M. From the winter solstice to the vernal equinox is about eighty-nine days, one hour; from thence to the summer solstice is about ninety-three days, less three and one-half hours; thence to the autumnal equiuox, about ninety-three days, fourteen and three-quarter hours; thence to the winter solstice again, about ninety days, less six and one-half hours.

By commencing the year on December 21st and giving to the winter ninety days, spring ninety-three, summer ninety-three, and fall eighty-nine in common years, and ninety in leap years, we shall have for January, February and March thirty days; April, May and June each thirty-one days; July, August and September each thirty-one days; October, November and December each thirty days, in leap year—December one less other years; and the seasons will commence very nearly at the equinoxes and solstices. The first days of January, April, July and October would then

fall, according to the present calendar, on the 21st of December, the 21st of March, 22d of June and 23d of September. The cardinal points would occur on these days in the majority of cases.

No change would be required except that of advancing the year eleven days and placing the intercalary day of leap year at the end of the year. Supposing the change to be made in December of this year, 1876, the year 1877 would commence December 21 and end December 20, and contains 365 days; 1878 ditto, 1879 ditto; 1880 would commence December 21, 1879, and end December 20, 1880, and contain 366 days, the 29th February making the additional day. The calendar would continue to follow the Gregorian style. The same years would be leap year as now.

This arrangement would correspond with nature and would be attended with many advantages. The placing the intercalary day at the end of the year would be worth the trouble.

The following bill would effect the change and obviate all civil inconveniences:

## BILL.

### A BILL TO REFORM THE CIVIL YEAR.

1. BE IT ENACTED, that, after proclamation shall be made as hereinafter provided, the civil year shall commence with the 21st day of December, according to the present reckoning, and the month of January shall be advanced so as to begin with that day; and the months shall follow each other in the same order as heretofore, and shall have the following number of days, respectively, to wit: January, February and

March, each thirty; April, May and June, each thirty-one; July, August and September, each thirty-one; October and November, each thirty, and December thirty in leap years and twenty-nine in common years.

2. AND BE IT ENACTED, that the President of the United States be, and he is hereby requested to instruct the Ministers and other representatives of the Government of the United States in foreign countries where the Christian year is used, to lay before the respective governments to which they may be accredited the plan for rearranging the civil year, as presented in the first section of this act, and to endeavor to procure their co-operation therein; and as soon as, in the judgment of the President, a sufficient number of said governments shall consent to join in such new arrangement, the President is hereby authorized and directed by public proclamation to declare when the said arrangement shall commence; and the year which shall precede the commencement of said arrangement, shall terminate at the end of the 20th day of December instead of the 31st day of said month, and the next civil year shall commence on the next following day.

3. AND BE IT ENACTED, that the change of the civil year, herein provided for, when the same shall take place, shall not have the effect of shortening or anticipating any period of time provided for in any contract, or the period of arriving at any year of age, or the period provided for the running of any statute of limitations, or for the publication of any notice or order, or for the doing of any act, matter or thing, except, however, and it is provided, that in all cases where nominal days of any months or year are, or shall be fixed, prescribed or allotted by law, custom,

usage, by-law or regulation for the meetings of any public or private bodies whatever, or for the commencement of the terms of any courts, or for the commencement or termination of any term of office, or for the acts of any officers or persons whatever, the said meetings, terms and acts respectively, shall be held, commenced, terminated, and performed respectively on the same nominal days in the civil month or year as newly arranged.

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## A LETTER FROM JUDGE BRADLEY, OF THE SUPREME COURT OF THE UNITED STATES TO THE SECRETARY OF THE TREASURY.

WASHINGTON, April 15, 1872.

HON. GEORGE S. BOUTWELL,
*Secretary of the Treasury.*

SIR: For the purpose of promoting the object of a large number of engineers and others interested in steam transportation, who desire that Congress should authorize experiments to be made to ascertain, with greater certainty, the cause of explosions and the best means of preventing them, and at the instance of persons speaking in their behalf, I have taken the liberty of addressing you the following letter. I hope that the intrinsic importance of the subject will be my excuse for troubling you with its perusal.

After the lapse of more than fifty years, the subject of explosions of steam boilers has lost none of its interest

or importance. They recur as frequently as ever, and are attended with frightful results to persons and property. Legislation has hitherto wholly failed to correct the evil. The cause of this failure has been the ignorance which has existed (and which still exists) with regard to the precise causes by which explosions are produced. The want of proper experiments on real boilers has left the matter open to speculation; and the result is a wide diversity of opinion amongst even skillful engineers as to the true causes of these disasters. With such a diversity of opinion, it is impossible to procure verdicts against those who are really guilty of negligence. In nearly all cases that have occurred since the passage of the first law in 1838, the guilty party has been shielded by the uncertainty and doubt that has prevailed as to the causes of the explosion. The notion has become prevalent that these accidents (as they are called) are the result of some mysterious cause—the production of an unknown gas, the combination of electrical and chemical forces, against which no foresight can guard. Such notions have a tendency to stop inquiry, as well as to relax the attention and watchfulness of engineers in charge. A series of experiments, conducted on a proper scale, and in a proper method, would undoubtedly tend to dispel such illusions and to reveal the exact causes of explosion, against which it is necessary to guard. And whatever diversity of opinion exists among engineers as to these causes, it is believed that they are quite unanimous as to the necessity of direct proof, by experiments on actual boilers, on the following points: first, the comparative strength of old and new boilers, of boilers differently constructed, and of

boilers constructed of different kinds of iron; and, secondly, the methods of relieving them of too great pressure.

But the experiments that are requisite for attaining these ends require too great an outlay of money to be maintained at private expense. They need, and should have, the support of Government, especially as the Government attempts (very properly) to regulate the subject.

Experiments on the causes of boiler explosions were made about thirty-five years ago by the Franklin Institute of Philadelphia, and a report was made to the Secretary of the Treasury, who had furnished the funds. These experiments were made by a very able board, of which Prof. A. D. Bache was chairman. The results obtained and the deductions from them constitute nearly all that is now known on the subject of explosions and of the means of preventing them. This report has been published all over Europe, and forms the standard of reference. (See Report E, Doc. 162, 1st Sess., 24th Cong.) But these experiments were made upon model boilers of small dimensions, for the purpose of obtaining theoretical results as to the behavior of the structure under certain pre-conceived conditions. The trial of real boilers and the careful examination of boilers actually burst, and especially the reconstruction and testing of them under various conditions, was not attempted.

There have been as yet, in no country, any serious attempts made by trials and experiments on steam boilers of the size and kind generally used, to find the laws governing explosions; or to find the means of preventing them. From their dangerous nature, such

experiments cannot be made upon boilers in use; and the examination of the debris of an explosion generally adds nothing to our knowledge. The necessity of such experiments has been acknowledged in all countries where steam is employed; but the expense and difficulty of making them on actual boilers have prevented their being made. From a few experiments made at Sandy Hook in November last, upon boilers of different ages, in the presence of a large number of engineers, it became perfectly apparent that much is yet to be learned on the entire subject, and that intelligent and efficient legislation cannot be devised in reference to it until the investigation is prosecuted much farther than it has yet been. The probability is very great that, contrary to opinions frequently advanced, there are no forces acting in the explosions of steam boilers but such as can be controlled, and that in every instance, by proper experimental inquiry, the true cause can be ascertained.

The principal objects of a proper system of experiments would be the following:

1. To detect the faults in the ordinary construction of boilers.

2. To adopt more perfect means of preventing dangerous pressure.

3. To acquire such certainty as to the true causes of disasters by explosions that the penal laws on the subject may be strictly and intelligently enforced, and that thereby owners, constructors and those having charge of boilers may be more careful and diligent in the performance of their duties to the public.

In view of these considerations, it seems to me that Congress would do very wisely to authorize the Gov-

ernment to have a series of experiments made, under the charge of a board of skillful engineers, for the purpose of ascertaining those results, which the increased facilities of the engineering art would now render attainable.

I have the honor to forward with this a copy of the report made by Chief Engineer Isherwood and others of the experiments made at Sandy Hook in November last, to which allusion has been made. A more full report by Professor Thurston, illustrated by drawings, has been published in the *Franklin Institute Journal.*

I also forward the draft of law, or joint resolution, which would enable the President, through either of the executive departments, to institute the experiments which I have indicated.

I have taken an interest in this subject, and have presumed to address you upon it, under the belief that the experiments proposed would have more effect in producing the adoption of safeguards against the disasters continually occurring from boiler explosions than any regulations which can at present be made. The whole steam transportation of the country and of the world, and, indeed, the entire commerce of the world, is deeply interested in the ascertainment of the precise laws and exact data on which to calculate and provide for these disasters.

Respectfully, your obedient servant,

(Signed) JOS. P. BRADLEY.

## AN ACT TO AUTHORIZE INQUIRIES INTO THE CAUSES OF STEAM BOILER EXPLOSIONS.

BE IT ENACTED, etc.

SECTION 1. That the President of the United States be, and he is hereby, authorized to cause such experiments to be made and such information to be collected as, in his opinion, may be useful and important to guard against the bursting of steam boilers; and that he be required to communicate the same to Congress; and that the sum of one hundred thousand dollars be appropriated for the purpose of this act.

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## RECURRENCE OF ICE PERIODS IN THE NORTHERN HEMISPHERE.

The absolute zero of temperature is —459.13 Fahrenheit, or 491.13 below the freezing point. This fact is deduced, amongst other things, from the law of expansion of gases, which is $\frac{1}{491.13}$ part of their volume at 32° Fahrenheit for each additional degree of temperature. Therefore the freezing point, or 32° Fahrenheit, is 491.13° above absolute zero. Supposing this to be the mean temperature, in New Jersey, on the first of January, when the earth is now in its perihelion, what would it be if the earth were in its aphelion instead of its perihelion on the first of January? This would depend on the relative distance of the earth from the sun at its perihelion and aphelion, and would be inversely as the squares of those relative distances. These relative distances are,

for perihelion 89,897,000 miles, and for aphelion 92,963,000 miles, so that the absolute heat derived from the sun in those two positions would be as $(92{,}963)^4$ to $(89{,}897)^4$. Thus, $(92{,}963)^4$ $(89{,}897)^4$; 491.13° : 459.27°, showing a difference of 31.86°.

This would make the temperature of our winters about 32° less than at present. Ten thousand five hundred years ago the earth was in aphelion on the 1st of January.

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## STANDARD OF WEIGHTS AND MEASURES.

The English yard is the standard of measure in the British Empire and in the United States. The metre is the standard in France and in several European countries. The ratio between them is as 1 to 1.093633; or as 36 inches to 39.370791 inches. The yard is the more convenient of the two, corresponding better to the natural pace, and to the height and fathom of a man, two yards being equal to the height and to the fathom (or extension of the arms) of a man of full height. It can also be more easily reconstructed if the standard measuring rod should be lost. By Act of Parliament of Great Britain, it is declared that if the standard yard shall be lost, or destroyed, it shall be restored by making a new standard yard, bearing the proportion to a pendulum vibrating seconds of time in the latitude of London, in a vacuum, and at the level of the sea, as 36 inches to 39.1393 inches. This is the actual relation between them, and a new standard yard exactly equal to the present one could be constructed from a pendulum. But if the

standard metre should be lost or destroyed, it could not possibly be re-constructed, except in the same way. In theory it is supposed to be one ten millionth part of the length of the meridian passing through Paris from the equator to the pole. The length of this meridian was ascertained by estimation in French toises, made from several measurements of arcs in different countries. There is no certainty that a new estimation would be the same. Besides, the estimation itself is based on an old standard—the toise. The standard metre was made up of so many parts of a toise. It depends on the toise, and that has gone into disuse, and had no natural standard to govern its length. The certainty and uniformity of the metre, in fact, depends upon some one metalic bar in Paris, just as the certainty and uniformity of the yard depends, in practice, on another metalic bar in London. Destroy those metalic bars, and both the yard and the metre would have to be reproduced in precisely the same way.

The best standard, after all, would be the distance between two bolts driven into the face of some rock, and repeating the process in every civilized country, and in many places. These bolts being faced with a non-corroding metal, and having fine lines drawn perpendicularly through the centres, each country could measure the distance between these lines with its own standards. The distance might be sufficiently large to avoid the multiplication of errors, say ten, twenty or thirty feet, so as easily to be transferred from one country to another by means of a single rod. In this way a uniform measure could be preserved in the world for many ages; and each nation could, as occasion required, correct its own standard thereby.

It would undoubtedly be a matter of great convenience to have uniform weights, measures and money throughout the world, but it is a thing of very difficult accomplishment, each nation being wedded to its own long-used standards. There is no reason on earth why the English-speaking world should abolish their standards and adopt the French. For me, it excites my disgust and indignation to see our sciolists in their written articles using the metre instead of the foot and yard. Our literature and our statistics for a thousand years are pervaded with references to our own standards. Our ideas are all graduated to them by habit and usage. Why should we be frightened from our propriety by a set of French enthusiasts, who wish to have the general regulation of all things? If their metre had anything on earth to recommend it as a standard in preference to our yard, there might be some reason for joining in the cry for the Metric System. But it has not a single thing to give it such a recommendation. The decimal division, if that is thought desirable, is as applicable to our standards as to the metre. We all use decimals every day of our lives. I concur entirely in the views expressed by Sir John Herschel in his essay on the Yard, the Pendulum and Metre, and I hope that our volatile and change-loving people will never consent to the adoption of the French System.

July 3d, 1880.

## THE FORCE OF WATER AS USED IN HYDRAULIC MACHINERY IN MINING.

The circumstances which led to this publication are detailed in the following letter from Mr. Justice Field to ex-United States Senator James G. Fair:

WASHINGTON, D. C., February 23, 1891.

HON. JAMES G. FAIR.

DEAR SIR: Last evening I dined at General Schofield's and met the President. There were a number of distinguished people present besides the President, among whom were the Chief Justice, the Speaker of the House of Representatives, Senators Sherman, Stanford and McMillen, Secretary of the Treasury, Windom and Mr. McKinley and Mr. Wheeler of the House. During the evening the conversation turned upon California and her wonderful products and mining operations. I took occasion to speak of hydraulic mining and the wonderful manner in which the hills are torn down by hydraulic machinery. I stated that I had understood you to say that such was the force of the water thrown through a hose, when it came from one to two hundred feet in height, that boulders weighing half a ton could be held* (moved) by streams playing upon them, and that the force was sometimes so great that it would be impossible to cut the stream. At this statement much surprise was manifested, and I thought a smile of incredulity passed over the features of the guests. Seeing this, I said that I would prove the facts stated in a communication to them.

Now, I write to you for the information desired. Please send me some carefully prepared statistics as to

hydraulic mining, particularly as to the power exerted by a column of water thrown by such machinery, and as to how large boulders can be held* (moved) by the force of the stream, and on the point whether it is true that the force of the stream is sometimes so great that it cannot be cut. I would be much obliged if you could give me full particulars in regard to these matters in a communication that I can use, if necessary. I propose to send a letter to each one of the guests, stating the facts, and thus remove the incredulity which they evinced when the statement was made by me. I want to show that it was only the result of a want of experience in hydraulic mining, their situation being somewhat like that of the King of Siam, who was offended when an English visitor told him that in his country water was often so hard that he could walk upon it.

Please let me hear from you at your earliest convenience, and believe me to be,

Very sincerely yours,

(Signed) STEPHEN J. FIELD,

Not having received an answer from Mr. Fair, on account of his illness, Mr. Justice Field wrote a similar letter of enquiry to Augustus I. Bowie, Esq., of San Francisco, the author of a work of great learning and merit on "Hydraulic Mining"; and also another letter of the same character to Mr. Christy, Professor of Mining and Metallurgy in the University of California.

* "Moved" instead of "held" was what was meant; as the very force striking the boulder would put it in motion instead of keeping it in repose, unless special preparation were made for the impact, as stated in the letter of Prof. Christy.

Subsequently a letter was received from Mr. Fair, enclosing one on the subject from Mr. Glass, who for sixteen years had been superintendent of a hydraulic mine in that State, and also the following

### LETTER FROM MR. JUSTICE BRADLEY OF THE U. S. SUPREME COURT.

WASHINGTON, D. C., March 5, 1891.

DEAR JUDGE FIELD:

The velocity of water issuing from a pipe is, of course, due to the pressure it receives—natural or artificial. If derived from a natural head of water, it is proportional to the square root of such head or height. If it were not for the resistance from the friction of the pipe and contraction of the vein as it issues from it, the velocity would be eight times the square root of the height in feet, or, more accurately, 8.025 times. The resistance varies according to circumstances. If the water has to be carried a long distance in the pipe, or if the pipe is rough or crooked, it is considerable. Supposing the reservoir near, and the pipe favorably arranged, the velocity will be 75 per cent. of the theoretical amount, or six times the square root of the height. Thus, suppose the head to be 450 feet; its square root is 21.2, multiplied by 6, it equals 127.2 feet velocity per second. If the cross-section of the pipe were equal to one square foot, this velocity would produce a discharge of 127.2 cubic feet per second. A round pipe, 6 inches in diameter, having a cross-section of only .19635 square feet, would discharge only 24.975 (say 25) cubic feet per second.

But this 25 cubic feet issues with a velocity of 127.2 feet. Multiplied together, it shows an effective force, or momentum, of 3,180 cubic feet moving at the rate of 1 foot per second. As each cubic foot of water weighs 62½ pounds, the above result is equivalent to 198,750 pounds, moving 1 foot per second. This is what is meant by foot pounds.

A horse-power is equal to 33,000 foot pounds per minute, or 550 per second. Therefore, dividing 198,750 by 550, we have $461\frac{4}{11}$ horse-power.

The force of soft substances, when thrown with great velocity, almost exceeds belief. A gun wadding may be made to perforate a plank. An injector has been invented (by a Mr. Jeffards, I believe) for injecting water into a locomotive boiler, in which the pressure often exceeds 100 pounds to the square inch; and yet, by this instrument, a small, swift stream of water is injected into the boiler with perfect ease. I can well believe all that you say with regard to the tremendous force of streams issuing from the pipes of the miners under a large head of water. Of course they would produce instant death if directed against a man standing near, and would probably cut his body in two.

Yours sincerely,

(Signed) JOSEPH P. BRADLEY.

# RELIGIOUS AND MORAL.

## JUDGE BRADLEY ON RELIGION IN THE CONSTITUTION.

Among the letters received by Rev. Mr. McAlister, Secretary of the Association which recently held a convention in Cincinnati for the purpose of urging an amendment to the Constitution, which shall acknowledge God, was the following from Judge Bradley, of the U. S. Supreme Court. It shows his own conviction of the necessity of religion as the basis of civil government, but it must reside not in the written Constitution, but in the people themselves, and cannot be forced into them by legislation:

WASHINGTON, December 7, 1871.

REV. D. MCALISTER.

DEAR SIR: Yours of the 2d instant has been received, requesting me to unite in the call of a convention favorable to an amendment of the Constitution of the United States, which shall acknowledge God as the author of the nation's existence and the source of its authority, Jesus Christ as its Ruler, and the Bible as the foundation of its laws and the supreme rule of its conduct. As you have done me the honor of writing me a special letter on the subject, I feel bound in courtesy to answer it.

I have never been able to see the necessity or expediency of the movement for obtaining such an amendment. The Constitution was evidently framed and adopted by the people of the United States with the fixed determination to allow absolute religious freedom and equality, and to avoid all appearance even of a State religion, or a State endorsement of

any particular creed or religious sect. Various oaths of office and of fidelity to the Constitution are prescribed in the instrument itself, but always coupled with an alternative privilege of making an affirmation instead of an oath. And after the Constitution in its original form was adopted, the people made haste to secure an amendment that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. This shows the earnest desire of our Revolutionary fathers that religion should be left to the free and voluntary action of the people themselves. I do not regard it as manifesting any hostility to religion, but as showing a fixed determination to leave the people entirely free on the subject.

And it seems to me that our fathers were wise; that the great voluntary system of this country is quite as favorable to the promotion of real religion as the systems of governmental protection and patronage have been in other countries. And whilst I do not understand that the association which you represent desire to invoke any governmental interference, still the amendment sought is a step in that direction which our fathers (quite as good Christians as ourselves) thought it wise not to take. In this country they thought they had settled one thing at least, that it is not the province of government to teach theology.

Therefore, whilst no person in your association places a higher estimate than I do on the great importance and absolute necessity of religious training and religious convictions to the stability of any government; I do not believe that the end will be at all

subserved by the proposed Constitutional amendment. Religion, as the basis and support of civil government, must reside, not in the written Constitution, but in the people themselves. And we cannot legislate religion into the people. It must be infused by gentler and wiser methods.

Respectfully, your obedient servant,

JOSEPH P. BRADLEY.

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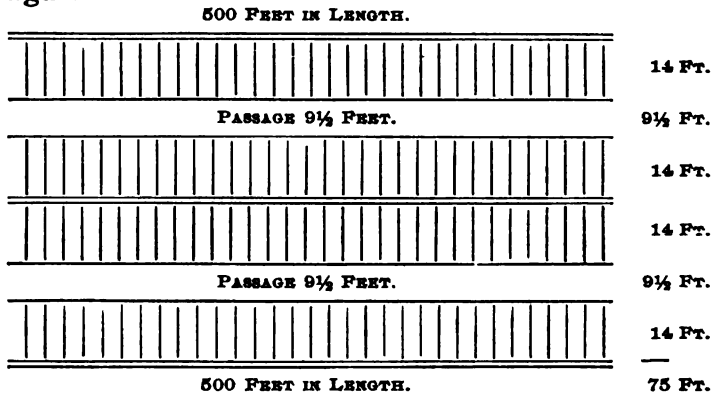
## CHRISTIANITY, ITS IMMORTALITY.

A noble evidence of the living and inextinguishable truth of Christianity is the fact of the Reformation. That Reformation was but an emanation of the spirit of Christianity itself. Other religions have forever gone on in the accumulation of ceremonies and superstitious observances, and never exhibited any innate principle of life sufficient to throw off the deformities so superinduced upon them. If they have felt the benefit of a correcting hand, that hand has been directed and applied by the progressive influence of the sciences and civilization. But the Christian religion, kindled by the fire of its own never-dying truth as preserved in the Holy Scriptures, the flame that rose so luminously over the nations of the West in the middle of the sixteenth age.

December 2, 1838.

## NOAH'S ARK.

This structure was 500 feet long and 75 in width, and consisted of three stories. This would admit on each story four rows of stalls lengthwise of the ark, each 14 feet in depth, leaving two passages the whole length 9½ feet in width, according to the annexed figure.




Each row divided into 62 stalls would give them 8 feet in width—this would be sufficient for each species of animal on an average, and consequently would accommodate 248 species of animals. Gleig says that there have been estimated from 200 to 250 different species of quadrupeds. The Editor of Buffon's Nat. Hist. says that some minute philosophers even go so far as to make 400 species. This appears to be extravagant. See Raleigh's History of the World. Raleigh, following Budaen's, makes only 264 individual animals in the ark, 89 species—but this was in the beginning of the nineteenth century.

Now, we may suppose that the contents of the ark were distributed somewhat in this way. The

reptiles and the provisions for the beasts in the lower story, the beasts on the second story, and the birds and Noah's family in the third story, together with their provisions. It is supposed that there were only three kinds of beasts which went in by sevens—cows, sheep and goats, and two kinds of birds—turtles and pigeons, as these were the only animals used in sacrifices. Vid. Brown's Dict., Title "*Beast*," and Bokart's *Hierozoicon*, in which latter work the Zoology of the Bible is ably discussed.

Noah went into the Ark about the 1st of November. The Hebrew year for civil purposes commenced with the month Tisri, which was the month or moon that commenced nearest to the Autumnal Equinox.

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## THE MORAL FACULTY.

The Moral Faculty is that power of the mind which perceives, approves and obeys the right as distinguished from the wrong in actions. It has three distinct functions, as indicated by the definition—perception of what is right; approval of it; and determination to follow it.

The first of these, perception, is sometimes called the moral sense, moral consciousness, or, simply conscience; the second, approval, is called moral disposition or rectitude, the third is called the will.

A highly civilized and Christian society, like ours, possesses so many means of moral instruction, and so much moral light, that it is not difficult in most cases to know what is right and what is wrong. The

conscience becomes insensibly educated to a high standard. The lessons of the Bible as expounded in religious assemblies, in schools and in families; the ethical teachings of our laws and literature; of our daily intercourse with others and our own experience, leave little to be sought in the way of instruction, except amongst the very poor and destitute classes. Still, some men are gifted with a keener sense of right and wrong than others.

The second function, moral approbation or inclination, is not so generally depraved as some imagine. Most men approve right rather than wrong; would rather do right than wrong, if other motives did not intervene. A pure love of evil is not an innate sentiment of the human heart. Men do evil not for the love of evil, but because seduced by appetites and passions. Wealth, power, sensual pleasure often present strong temptation to adopt devious ways for their attainment.

And here comes in the proper office of the will, the third function of the moral faculty. It is not so much for lack of knowledge of what is right, nor of appreciation of the right, that men do wrong; but the great source of evil-doing lies in the will. The will is not strong enough to resist temptation; to wrestle with the appetites and passions. Here is the weak point of human nature—the strength of the passions and the feebleness of the will to resist them. With the strongest desire to do right, with even a love of the right, the will often weakens before temptation, like wax before fire, and straightway wrong is committed, followed by sorrow and remorse of conscience.

The great problem, therefore, for every one to solve

is, how to subdue his passions and strengthen his will to act rightly. The two things, though mutually concerned in the formation of the moral character, are not reciprocal. A strong will may co-exist with fierce passions, and keep them in subjection, but the true Christian soldier will guard well both sides of the fort. He will endeavor to subdue his passions, and, at the same time, to strengthen his will power.

The power of the will is very different in different persons by natural constitution. The will is as much a natural faculty in each individual as memory or imagination or any other innate power, in which men differ as much as they do in stature and features. Hence, if the will is naturally weak, or inclined to weakness, it requires great and continued attention and habitual effort to bring it to a condition of permanent improvement in strength and firmness. Lax measures will never succeed. The least indulgence of weakness throws all back again to be recovered by repeating the same painful efforts as before. In this respect a naturally weak will is like drunkenness, which, when it has once subdued a man to its bondage, cannot be thrown off by fitful efforts at reformation; but must be utterly crushed out and destroyed by a firm and persistent rejection of every solicitation and approach.

An indispensable means of fortifying the will is the adoption of fixed principles of action, to be adhered to without swerving; principles based on truth and right. Anything that for an instant solicits, or even suggests, a departure from these principles should be instantly repelled without allowing the indulgence of

a thought that it can be entertained for a moment. The importance of having settled in one's mind a system of fixed principles of conduct cannot be overestimated.

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## PRECEPT AND EXAMPLE.

1. In morals, *precept* is nothing, *example* is everything. A really good and noble character once clearly discerned in its living active force, is a better incentive to virtue than all homilies. But as such a vision is not often vouchsafed; as men do not thus ordinarily reveal themselves to others; the nearest approach to the same thing is the daily and hourly life and conduct of such a person; by which, as by letters and signs, the true character is gradually revealed and made known, imprinting itself, like a portrait, upon the minds and hearts of others.

2. In human life *opportunity* is everything. Success depends upon opportunity. Acquirements, learning, aptitude, practical ability, greatness, depend on opportunity. A library placed away in a dark or cold room, or on inaccessible shelves, will benefit a man or his family but little. But if ranged around the family rooms, where all is cheerful and pleasant, where the family *live*, and within reach of the hand, it will become a rich treasure and an indispensable luxury.

The best legal talents, without opportunity for their exercise, will rust and decay; without opportunity for their display, they will disgust their

possessor. Life consists in hope, and a consciousness of being of some use in the world. Without these it is a living death. Without opportunity, hope and joy are strangers to the yearning soul.

3. The active employment of the faculties alone can make us useful or happy. Hence it is that adversity is a rich soil which ever produces fruitful results in character and ability. It puts a young man upon his mettle, brings out what is excellent and good in him, and makes him a really great and noble character. But prosperity is attended with ease and indolence as inseparably as the shadow follows the sun. Thus it happens that our greatest and best men, as well as our most wealthy and successful, are constantly springing up from the lower or middle classes of society. Thus it also happens that troublous times in the history of a nation almost invariably produce examples of great talent and heroism. And nothing, on the other hand, is more sure to sap the foundations of national strength than habits of luxury and ease indulged in by its young men. Every American, as a matter of honor and just pride, ought to have a calling—a something to do; and he ought conscientiously to follow it, not only on account of the example, but on his own accont.

4. Those who place religion in the belief of certain theological dogmas mistake its true character. Christ placed it in *love* to God and man. John held these to be inseparable. "If a man say he loves God and hateth his brother, he is a liar." James declared that pure religion is this, to visit the fatherless and widow in their affliction and to keep himself from the world. Paul said, "There are three things, faith, hope and charity, and the greatest of these is charity."

5. The Greek expression for human perfection, *To Καλον*, is full of deep meaning. To say and to do just what is proper on every occasion of life is indeed perfection, if not greatness. It implies being equal to every occasion, and meeting it accordingly. If this is not true greatness, what is? He who is competent to the age and country in which he lives; silent when silence is proper; eloquent, when eloquence is needed; energetic in action, when action is required; always accomplishing, always meeting the demands of the time; is either the truly great man, or better than a great man.

6. It is the duty and should be the pride of every American to have an honest and useful calling, and to pursue it. I care not what it is; be it honorable and faithfully pursued. This is necessary to the interest of the Commonwealth, and to the happiness and virtue of the individual. It should also be necessary to the entré of society. Elegant loungers should be as coldly received as tipplers and gamblers. But whilst this is our beau-ideal of a healthy social life, it is perhaps too much to expect of ordinary human nature.

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## EXAMPLE.

An act of kindness to another does more to produce a kind feeling on his part than the finest lesson in words. Kindness produces kindness; sympathy, sympathy; anger, anger; and every emotion felt and exhibited is met responsively by corresponding emotions in others. This is the sentiment which the Jewish

interpreters attribute to the proverb: "As in water face answereth to face, so the heart of man to man." The facts of human consciousness and experience are the safest interpreters of religious and moral formulas. For those formulas have generally been attempts to express such consciousness and experience. And actual manifestations of character make a far deeper impression than set moral phrases or the best composed lessons. Actions speak louder than words. Just as in the natural world, or in matters of science, a fact actually observed is rarely forgotten, whilst verbal lessons conveying the same facts pass unheeded, so in the moral world, real exhibitions of character, disposition or principle affect the heart more deeply, and the conduct more durably, than any verbal teachings can do. Hence Christ profoundly enjoins, "Let your light so shine before men that they may see your good works, and glorify your Father which is in heaven."

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## REFORMERS.

Great Reformers are such because they are great thinkers, and hence, in advance of their times. A few great seminal thoughts affecting practical life generally characterize their teachings. These are often repeated in conversations and presented in different points of view, until their hearers become perfectly imbued with their spirit. Their written works are generally the least important part of their power, which arises more from their personal influence, and the intensity of their conceptions and utterances. Their most pow-

erful and influential sayings are recorded by devoted followers, and thus preserved for the guidance of future ages. Witness the remains of Confucius, which were collected and preserved by his disciples. "The Master said," thus and so, is the style in which they read. Socrates wrote no book. His scholars reported his conversations. Jesus Christ's discourses are all that we have of him. Mahomet's chapters of the Koran were oracular discourses uttered at various times. Luther wrote, it is true, but his great power lay in his talking and preaching, and in his bold enunciations of grand truths. His "Table Talk," so assiduously preserved by his companions, show the man and his power far better than any of his treatises. The Reformer was not Luther, the man of the closet, but Luther, the man of the world. The secondary spirits of the Reformation, Melancthon, Calvin, etc., wrote and acquired greatest repute by their writings. And so I might go on with the list.

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## THE LORD'S PRAYER.

The Lord's Prayer is an Epitome of Christianity, as taught by Jesus Christ. "*Our Father in Heaven,*" teaches us to address our petitions immediately to the Supreme Being, without intervention or mediation—without the aid of Priest or intercessor. Whether poor or rich, wise or foolish, we are all equal before him whom we address. It teaches that He is One; that He is our Father, consequently, that He cares for us, and will protect and bless.

Where, when or by whom, before Jesus Christ, was it taught thus? Fatherhood of God—Brotherhood of Men. "*Hallowed be thy name.*" That is, may we be imbued with the deepest reverence for Thy being and character.

"*Thy Kingdom come, Thy will be done on earth as it is in heaven.*"

This is an aspiration for God's reign in earth—over the hearts and lives of all men; a longing for universal truth, justice and love.

"*Give us this day our daily bread,*" that is all, not Power, Wealth, Glory, but that which suffices for our sustenance and comfort and elevation in knowledge and usefulness.

"*Forgive us our debts as we forgive our debtors.*"

"*Lead us not into temptation, but deliver us from evil.*"

That is, remit, overlook, forgive, our past offences, and help us to offend no more. Remove temptation from us. Keep us from falling.

Here is the whole essence of the Christian religion.

1. God's existence, fatherhood and loving kindness to all, and hence His attention to our wants and prayers.

2. The equality and brotherhood of all men, and hence the duty of Universal Charity.

3. The prime importance of our spiritual nature, and hence the secondary importance of sensuous and material things.

4. The need of God's forgiveness and help, and hence the hopelessness of an unforgiving spirit.

In reason we can only ask forgiveness as we forgive.

## THE BIBLE.

As a book of pious meditation and exercitations on morality and religion, the Bible is a valuable repository. The Jewish intellect was ever keen and its religious insight profound, tracing with remarkable accuracy the springs of action and the respective consequences of immoral and virtuous conduct.

The devotional fervor of the Psalms, the sententious wisdom of the book of Proverbs, and the profound reflections of Ecclesiastes on the vanity of life are, in their several ways, superior to any similar productions of other nations. The sublime emotions of the soul when conscious of a Divine Presence and the stern conclusions of Reason on human character and destiny, cannot be fitted to more beautiful or expressive forms of imagery and speech. The prophetical writings also abound with sublime passages of exalted moral exhortation and instruction, as well as vehement denunciations of vice. Add to these the simple and searching lessons of faith, sincerity, purity of heart and universal charity of the New Testament, and we shall find sufficient foundation for the moral power exerted by the Christian religion upon the nations which have been subjected to its influence. The theological dogmas and articles of faith which have been attached to it, whether from the first, or by subsequent ecclesiastical authority, have not affected its genuine power over the hearts and lives of men as an instrument of moral elevation, civilization and refinement.

This much may be said of the value and influence of the Bible, without entering into the question of special

revelation and miracles, which have so much agitated both the curious inquirers and the superstitious devotees of the Christian world. And this view of its office and mission is consistent with the free and intelligent use of all similar aids to virtue and spiritual elevations to be found in the sayings of the great and good of all nations and times. It is an undue exaltation of a single book which places all others in the background as utterly worthless. The Caliph Omar committed this error when he ordered the burning of the Alexandrian library, on the ground that if it contained more than was in the Koran it could not be true, and if it contained less, it was useless. The gathered wisdom of the ages is the common inheritance of mankind, and every scattered ray contributes to the full blaze of modern enlightenment. The skilful eclectic will find many gems of truth in the utterances of Menu, Boudha and Confucius, and much sound ethics in the Greek and Roman philosophies. To despise them is to throw away a large portion of the legacy of antiquity. It would be equal folly to reject the wisdom of the moderns.

The difficulty is, that there is a strange tendency in human nature to adopt some one authoritative standard and blindly to rest on that, rejecting everything else. This tendency sometimes goes so far as to adopt some man or class of men to decide all matters of faith and duty. The generality of mankind prefer implicitly to follow; and hence they are ever ready to worship some saint in religion and hero in power, or some one or more whom they imagine to be such. But a wise man is he who tries all things and holds fast to that which is good.

July 7, 1875.

## TRANSLATIONS.

Translations are made upon different principles; some are very literal, preserving the idioms and arrangement of the original text; others are so free and paraphrastic that the original work is hardly recognized. It is singular that the two greatest Bible translators in modern times, Luther and Tyndale, adopted, independently of each other, a most excellent principle, which greatly contributed to the popularity of their respective works; and this was, to render the Bible into pure vernacular speech adapted to the common understanding, and avoiding all idiomatic peculiarities of the original tongues, and all unnecessary ecclesiastical and scholastic terms. They thus produced for their respective nations, German and English, the People's Book, which not only addressed itself to the popular heart, but became the standard of the language. "If God spare my life," said Tyndale, "ere many years I will cause a boy that driveth the plow to know more of the Scriptures than the Pope does." "The words of the Hebrew tongue," said Luther, "have a peculiar energy. To render them intelligently we must not attempt to give them word for word, but only aim at the sense and idea. In translating Moses I made it my effort to avoid Hebraism; it was an arduous business." The revisers of King James's time strove to make the translation more literal, and in doing so often injured its beauty and force.

# THE ENGLISH TRANSLATION OF THE BIBLE.

## HISTORICAL LECTURE BY JOSEPH P. BRADLEY.

Joseph P. Bradley, Esq., delivered an interesting lecture on the "History of the English Translation of the Bible," in the lecture room of the North Reformed Dutch Church, last evening (December 26, 1867). The easy colloquial style which the lecturer assumed gave additional interest to his discourse and made the entertainment thoroughly enjoyable. He first stated, by way of introduction, that it was undoubtedly the intention of the Almighty that the Bible should be given to every people in their own language, that they might be fully able to understand it. This, certain orders of the clergy for ages refused to acknowledge, being desirous of making their professional class necessary as interpreters between God and the people and of preserving the mystery which was necessarily connected with the Word of God in an unknown tongue. He then briefly considered the history of the English language and from what dialects it was formed, and what progress had been made in the Anglo-Saxon literature, in the Norman, and finally in the two combined, or the English. In the Saxon, there were five or six translations of the four gospels, in the Norman there was only one.

The latter was not much used, as the lower class of the people knew but little of what was to them a foreign dialect. In the century in which the Norman and Saxon became united, John Wickliffe lived To him belongs the honor of the first English translation. By

his own labors in 1360 he had completed the New Testament; in 1380, with the aid of others, the whole Bible was completed. Printing not having been invented, the circulation of this was of necessity very slow. There are now extant over one hundred copies of the manuscript in different parts of England; and the Bible has been printed within a few years past as a literary curiosity to show the condition of the language in the fourteenth century. Mr. Bradley read the fifth chapter of Matthew and the Lord's Prayer from Wickliffe's translation.

During the fifteenth century England was under Popish influence, and attempts were made to repress the translations which had already been made. About the middle of the century, in 1452, the Greeks were driven from Constantinople and the learning which they had centered there was spread over the western world. English literature received new accessions by the settlement of some of the Greek scholars as professors in their institutions of learning. This, with other favoring causes, gave an impetus to mind, and produced a general awakening of the nations—called by the French, the Renaissance, and by the English and Germans, the Reformation. In 1517 Luther set in motion the ball which never rested in its course till the thralldom of the dark ages was broken. William Tyndale was one of those men in England in whose breast the fire of pure religion burned.

He was a profound scholar, and felt an ardent desire to give to his countrymen the unadulterated word of God, which he loved so much; and in 1520 he declared to an eminent divine of the old school, "Ere many years I will cause a boy that driveth a plow to know more

of the Scripture than you do." And he lived to make his prophecy good. He soon afterwards commenced the work of translating the Scriptures, as Wickliffe's translation was almost unintelligible to the common people at that time, owing to the changes in the language. In 1525 the New Testament was completed. Tyndale was compelled to go to Germany to have it printed, as any attempt at that time in England to circulate the Scriptures would have been punished with martyrdom. In Germany he commenced a translation of the old Testament, and had proceeded as far as to the end of Chronicles when he was apprehended and put to death. John Rogers, an Englishman residing in Antwerp (the same who afterwards suffered martyrdom under Queen Mary), undertook the work of revising and printing the translation. When he had completed Tyndale's work—the whole of the New Testament and the Old as far as Chronicles—he depended on Coverdale's translation for the remainder, which had been printed but not yet published. Coverdale had made free use of Tyndale's translation as far as it had been published, in making his own, and Rogers procured the use of his (Coverdale's) in those portions of the Bible which Tyndale had not translated. Coverdale's version was published in England about the same time that Tyndale's was, but never obtained the public favor.

In 1537 Rogers completed his work, and some London publishers had the good fortune to get the royal license for its dissemination in England. But Tyndale, its author, had in the previous October suffered martyrdom for his glorious work. His Bible, however, thus introduced into England, not under his

name, but under the fictitious name of Thomas Matthew, met an auspicious reception, and became widely circulated. It has always gone by the fictitious name of Matthew's Bible, and hence the true author has never received the credit due for such a noble legacy to the people and language of England. This is the Bible which, with slight revision, we have at this day, and which is generally accredited to King James's translators. Their work, however, though a good work (as we shall see hereafter) was a mere work of revision, and not translation, and the great body of the English Bible, as they left it, was given to the English nation by William Tyndale, and in a subordinate degree, by Coverdale, it is but just to assign to them the credit of the translation. Other nations had the Bible translated into their languages at nearly the same time. A German translation was made in 1480; it was not, however, a perfect one, and in 1532 their present translation, made by Luther, appeared. A Dutch translation was made in 1526, a Lower Saxon in 1533 and a German Swiss in 1529.

At the conclusion of the address the audience requested that the history of the translations be continued at an early day. Mr. Bradley consenting, Thursday, the 9th of January, was appointed.

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## ENGLISH TRANSLATION OF THE BIBLE (II).

The history of this translation by Christopher Anderson is exhaustive of the subject, except in regard to the sources of the various revisions. A critical

examination of the original translation and of each revision thereof, compared with the critical apparatus which each editor had to aid him, would reveal not only the progress made at each step, but the sources from which every improvement or change was derived. The article "Version Authorized," in Smith's Bible Dictionary, is also very full on the subject.

The Anglo-Saxons had several different versions of the Gospels, the Psalms, some of the Epistles and other parts of the Bible. But no trace has been found of a version of the entire Bible. These versions were made from the Latin Vulgate, which was then the only text in general use in Western Europe, and were made from the ninth to the twelfth centuries.

John Wickliffe completed an English version of the Vulgate New Testament in 1360, and with the aid of Nicholas de Hereford and Richard Purvey completed the entire Bible in 1380 or 1382. Wickliffe died 1384. A large number of the Wickliffe Bibles are extant in manuscript.

### MODERN ENGLISH VERSIONS.

1. Tyndale's
   - New Testament, 1526.
   - Pentateuch, 1531.
   - Book of Jonah.
   - Historical Books O. T. not published but used by John Rogers in Matthew's Bible, 1537.

2. Coverdale's, 1535, printed (*i. e.*, dated) but not published until 1537.

3. Matthew's, 1537. Edited by John Rogers under the fictitious name of Thomas Matthew, and composed of Tyndale's as far as translated by him, and the balance of Coverdale's, all somewhat revised and corrected.

4. Taverner's, 1539.
5. Cranmer's, 1540.
6. Genevan, 1557, 1560.
7. Bishop's, 1568.
8. Thomson's New Testament, 1576.
8A. Rheimish New Testament, 1587.
8B. Douay Bible, 1609.
9. Authorized Version, 1611.

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## JUDGE BRADLEY ON THE OLD ENGLISH BIBLE.

[The *Evangelist*, Thursday, May 3, 1883.]

[Mr. Justice Bradley, of the Supreme Court of the United States, is not only a distinguished Judge but an eminent scholar as well. Master of several languages, his familiarity with them has taught him to appreciate the more the good old Saxon, which is the basis of our mother tongue. This leads him to prize and cherish the old English Bible without any of the modern "revisions" or improvements. The following, which a friend has kindly obtained for us, with permission to use it, was written years ago, before the recent Revision was entered upon, and had reference to some versions prepared by individuals, which had a very limited circulation. The observations, therefore, were not intended to apply to the recent Revision prepared by the best Biblical scholars in England and

America. No one would appreciate more highly the results of modern learning which might throw light on the word of God. And yet the bearing of what is said here would be against any attempt at revisions; and without his positive statement on this point, we are inclined to think that if he were asked to form his opinion as a Judge between the two versions—that of King James and the late Revision—he would say: The old is the better.—*Ed. Ev.*]

The English Bible taken altogether is a book which the English-speaking race should love and reverence. It is certainly inspired now if it were not at first. Spiritual meanings, hallowed associations, sacred memories, lurk on every page, in every passage. That which was coarse has become chaste; that which had little meaning has become big with meaning; that which was commonplace has become divine. It is pervaded with the odor of human sanctity, like a garment enclosed in a chest of sandal-wood. It is invested with a halo produced by reverential regard, which ever reacts upon itself, transfiguring that which it gazes upon. Generation after generation has brought to it each its contributions of inspired meanings, and it is consecrated by the divinest yearnings of humanity. Add to this its pure archaic English, the very form and body of which has become sacred to the national taste and dear to the national pride, and we may account, in some degree, for the talismanic effect produced by this book of books, which no irreverent hand should touch and no irreverent tongue defame. Properly appreciated and wisely used it is the most valuable aid and support to piety and virtue.

I have no patience with the constant attempts to change the common version of the Bible. When it expresses the sense of the original, why change it? Is it to avoid archaisms? I like them. They are generally pure old English, which it is well to preserve. In addition to its intrinsic beauty, it serves as an introduction to our earlier literature. Besides, we become attached to words that have become sanctified by long use. They often have associations for us that no affected elegance of diction can supply. For example, Noyse and others use the auxiliary verb will for shall. "Blessed are the pure in heart for they will see God." What is gained by this change? It seems made for the sake of change. Campbell and Boothroyd retain "shall" but discard "blessed" for "happy," and the former discards "pure" for "clean." Thus, "Happy the clean in heart for they shall see God." Is the sense made more perspicuous by these changes? Not a particle. An old familiar expression is exchanged for a new one, which serves no better purpose in any point of view. Exactly the same moral thought is conveyed to the mind as by the old version; and that version has been the possession of English readers—not from the time of James, but from the time of Henry VIII, the time of Tyndale and Coverdale. It has been our inheritance for three centuries and a half. I may be over-nice, but I confess that such verbal changes in our sacred and venerable classic are offensive to my ears.

The moral lessons of the Bible relate to facts in our experience and to phases of our moral nature. Our own consciousness recognizes their application. Trifling variations of diction can make no alteration

in their substantial sense. That is determined by the real facts of thought, propensity, life. Some human characteristic is the object of each uttered formula of truth or precept, and fixes its true interpretation. Without this objective basis of fact for its application the formula would be meaningless. With it the meaning is definite and unchangeable. This is the great conservative element which makes the Bible a practical book and restrains all fanciful expositions of its language. Therefore it is, that even apologues and parables go straight to their mark and are rarely misunderstood. Conscience, seated in the inner recesses of the human bosom, is quick to perceive and understand what is meant. Some sore spot of guilt or sorrow is instantly touched and responds to the rebuke or the promise. The facts of human nature are the exponents of religious teaching. It is here, and here alone, that the teaching finds its application, just as the definitions of science find their true interpretation in the things themselves sought to be defined. No fanciful variations of phraseology in the definition or lesson can alter its substantial significance. When it is said, "Blessed are the pure in heart, for they shall see God," we know as well what is meant by the annunciation as if Greek or Syriac were our vernacular tongue and we had heard the original words uttered by the Saviour himself. No exposition can make it clearer. No choice modern phrases can make it better understood. Purity of heart is a spiritual fact, which, like a straight line, is always the same under every change of description, and the happiness that springs from it is as aptly suggested by the word "blessed" as by any other. It is a happiness that has a moral

reality, and is not modified or changed by the choice of the words used to describe it. The words we have are good enough, and being hallowed by long and devout use, are better than any new-fangled diction that can be devised.

This instance is but one of ten thousand to which the remarks would apply. I concur in changes that are necessary to correct manifest errors, and in omissions of spurious readings when clearly shown to exist. But in no other case should we alter or touch the venerable fabric of pure, even though archaic, English which we have so long possessed in our standard version of the Bible. It is the poorest pedantry to attempt a correction of either the language or the grammar. Both in their time were as well understood by the translators as they are by modern pedagogues.

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## EASTER DAY.

*April 9, 1882.* This is Easter day, and, by a coincidence which does not often occur, it is the chronological anniversary of Christ's resurrection, which took place April 9, A. D. 30. Last Friday, being Good Friday, was the like anniversary of his crucifixion. The coincidence generally occurs only three times in a century, and sometimes not so often. Thus, it occurred last century in the years 1719 and 1730; in the present century in the years 1871, 1882, and will again in 1893, and in the next century it will occur in the years 1939 and 1950. It is observable that when it does occur it is repeated at intervals of

eleven years—which arises from the fact that eleven years (three being leap years) contain 4018 days, which make an exact number of weeks and nearly an exact number of lunar months, the number of weeks being 574 and the number of lunar months being 136, with a surplus of one day, twenty hours and ten minutes. If, therefore, the full moon happens on Saturday, 8th April, Easter day will be on the 9th. Eleven years afterward the full moon will occur on Thursday, the 6th April, and Easter on the 9th; eleven years after that full moon will occur on Tuesday, the 4th April and Easter on the 9th. Thus three of these instances may occur successively at intervals of eleven years; but it would not occur a fourth time, because there can only be three successive eleven year periods, each having three bissextile years; and if the 9th of April happens on Sunday three times successively, yet it cannot do so the fourth time.

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## THE WORLD IS NOT ETERNAL.

That the material world is not eternal is very clearly proved by the progressive changes which it undergoes. It seems clear that worlds are now in the process of formation. Some of the nebulæ at least, are agglomerating into revolving spheres, and the solar system presents every indication of having gone through the same process. The sun itself and all the planets have passed through a process of condensation, and are still subject to that process. The billions of years of duration through which the formation and

organizing process has been going on may appall the mind when it attempts to comprehend it; but were it a billion times longer than it has been, it would still be limited duration, and could constitute no conceivable comparison with eternity. We are necessarily carried back, therefore, to a period when the matter of the Solar Universe, and of all other universes, was in a gaseous, chaotic and dispersed state, and when its revolutions, the effect of gravitation, and the cause of distinct formation into spheres, had not begun. And yet the matter of these universes, if endowed with this gravitating power, must necessarily have begun to move and to revolve as soon as it commenced to exist. If it existed from eternity, its development into spheres must have existed from eternity, and their ultimate state of unchangeable solidity would have been reached before the commencement of time. But we see that this state is not yet reached, and, therefore, it is demonstrable either that the particles of water had a beginning, or that the gravitation of matter had a beginning. But we cannot separate the one from the other. For if the particles themselves are eternal, and gravity had a beginning, what gave it that beginning? The particles themselves could not evolve it, because having existed eternally without this power, they must have acquired it by its being superinduced from some cause foreign to themselves; and the creation of this power (gravitation) would be as fatal to the idea of the eternity of the universe as the creation of the particles of matter would be.

It follows, therefore, as a necessary result, that matter cannot be eternal. And if matter is not eternal, then we are landed upon the necessity of some other eternal existence which has produced matter and its

laws. For the human mind cannot conceive a beginning to duration nor the absolute non-existence of some being from eternity.

The overwhelming law of our own nature therefore drives us to the belief, nay, to the absolute certainty, of the existence of an eternal and infinite Being who has created all things and given them their laws.

The fact of progression in the order of nature is abundantly proved by the phenomena exhibited by the planet which we inhabit. The successive geologic periods show the progress from a molten metallic mass on which no life or vegetation could exist, through all the stages of change and development, the origin of vegetable and animal life, the production and disappearance of extinct organisms, down to the earth of to-day, on which man and new races of animals find a congenial home. Man himself has passed through changes and progressions. The evidences of his existence grow fainter and fainter as we travel back into the past history of the earth; and after they begin to show themselves, we find on our return upon the track of time that the manifestations of his culture and civilization increase age after age until we reach the dawn and afterwards the broad daylight of human history.

All that is revealed to us in the universe betokens constant change and constant progression. It is this law of change and progression on which is based the absolute demonstration that the visible universe had a beginning, and that the only occupant of eternity and immensity was and is and must be its Creator and Governor.

February 22d, 1883.

[New York *Evangelist*, June 28, 1883.]

# YEAR AND DAY OF CHRIST'S CRUCIFIXION.

BY HON. JOSEPH P. BRADLEY, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

The exact time of Christ's crucifixion may be approximately demonstrated by astronomical calculation, after paying due regard to the historical data we possess. The cardinal conditions required by these data are, first, that the time must be brought within the procuratorship of Pontius Pilate; secondly, it must be after the fifteenth year of the reign of Tiberius, and after the thirtieth of Christ's age; thirdly, it must occur on the 15th of the Jewish month Nisan (or Abib) and on the sixth day of the week, or Friday.

1. Pilate's procuratorship is fixed as follows: From Josephus we learn that Gratus was appointed Procurator of Judea by Tiberius, after the death of Augustus (which occurred August 19, A. D. 14) and continued eleven years, and then returned to Rome; and that Pontius Pilate went out as his successor, and continued ten years, and was then recalled, and started for Rome, but before he arrived Tiberius was dead. As the death of Tiberius happened March 16, A. D. 37, and as it probably took Pilate several months to make his preparations and complete his journey to Rome in the winter, it is apparent that the last year of his administration was A. D. 36, and that his entire administration extended from A. D. 26 to A. D. 36 (Josephus' Antiq., b. XVIII, c. II, sec. 2; c. IV, sec. 2).

2. Luke in his Gospel, Chap. III, says that the preaching and baptism of John commenced in the fifteenth year of Tiberius Cæsar, Pontius Pilate being Governor of Judea; and that Jesus was baptized beginning to be about thirty years of age; and that immediately afterwards He was tempted, and then returned to Nazareth, and commenced publicly to teach the people (Luke, Chaps. III, IV). As it is generally agreed that Christ's public ministry continued some three years, the crucifixion must have occurred within three or four years of the above date.

Now, what year was the fifteenth of Tiberius? and what year was it in which Jesus began to be thirty years of age? The years of Tiberius' reign were reckoned from two different epochs; one, his admission as joint Emperor with Augustus over all the provinces and armies, which took place in the year 12, and the other, his accession to the entire government on the death of Augustus, which occurred in the year 14. The first of these would naturally be used in Judea, and the fifteenth from this epoch would be the year 26, the year in which Pilate's procuratorship commenced. We are confirmed in supposing that this was the year meant when we take into consideration the age of Jesus at that time. We know that he was born in the reign of Herod—probably in the last year of his reign, because he is spoken of as still "the young Child" when he was brought back from Egypt on the death of Herod and the accession of Archelaus (Matt. ii, 20). Josephus gives us the materials for fixing the date of Herod's death. He tells us that he was made King by vote of the Roman Senate, with the consent of Augustus, in the 184th Olympiad, when Caius Domitius

Calvinus was Consul the second time, and Caius Asinius Pollio the first time. Their Consulate was in the year of Rome 714 and B. C. 40, and the 184th Olympiad ended July 1, B. C. 40. Therefore, Herod must have been made King before July 1, B. C. 40, and he reigned from that time thirty-seven years; so that he must have died B. C. 3, and the last year of his reign was B. C. 4–3 (Josephus Antiq., b. XIV, c. XIV, ss. 4, 5: b. XVII, c. VIII, s. 1; Prideaux's Connection under B. C. 40 and B. C. 4. Therefore, Christ entered upon His thirtieth year in A. D. 26. and completed it in A. D. 27. Therefore, whether he was baptized in the latter part of 26 or the beginning of 27, it would be correctly said that He "began to be about thirty years of age." It seems very clear, therefore, that John's preaching commenced in the year 26, and that Jesus was baptized and commenced preaching at the end of 26 or beginning of 27. His first passover, after He commenced His public ministry, would be either that which took place in the spring of 27 or that which took place in the spring of 28. It is certain that the crucifixion could not have taken place earlier than A. D. 28, and it is not probable that it took place later than A. D. 31, unless the period of His public ministry lasted longer than has usually been supposed.

And now comes in the astronomical argument depending on the question, was there a year from 28 to 31, inclusive, or near that period, in which the 15th of Nisan fell on the sixth day of the week, or Friday? I have assumed that the crucifixion took place on the 15th of Nisan. It seems to me there can be no doubt about it. The Passover was to be killed on the 14th

of Nisan, "between the two evenings" (Ex. XII, 6)—*i. e.*, in the middle of the afternoon, as was always understood and practiced by the Jews. (See Ainsworth's Commentary on the passage). It was to be eaten the same evening. This was also the first day of unleavened bread. "This day shall be unto you for a memorial, and ye shall keep it a feast to the Lord throughout your generations. Seven days shall you eat unleavened bread; even the first day ye shall put away leaven out of your houses." (Ex. XII, 14–15). Matthew tells us; "Now the first day of the feast of the Unleavened Bread the disciples came to Jesus saying unto Him, Where wilt Thou that we prepare for Thee to eat the passover?" etc. (Matt. XXVI, 17). Luke says: "Then came the day of unleavened bread, when the Passover must be killed, and He sent Peter and John, saying, Go and prepare us the Passover, that we may eat," etc. (Luke XXII, 7–8). Then followed the Last Supper and Gethsemane, and the next morning (the 15th of Nisan, of course) Jesus was condemned and crucified. I shall assume that that was the day, without entering into the controversy about the apparent discrepancy between John and the other Evalgelists. Of course the 15th of Nisan was on the same day of the week as the 1st of Nisan.

Again, I will assume that the day was the sixth day of the week, or Friday—the day preceding the Sabbath, the preparation day. That is almost the universal understanding of Christendom. There are some, it is true, who contend for some other day; just as there are some who say that Shakespeare did not write the plays that go by his name. But I will not stop to argue the point.

We are to find, then, a year, from 26 to 31 inclusive, in which the 15th, and, of course, the 1st, Nisan fell on Friday.

The Jewish year was a lunar year, consisting of twelve, and sometimes thirteen, lunar months, and Nisan was the first month of the ecclesiastical year. It will be necessary to fix the true commencement of this month for the years in question.

As bearing on this subject, the learned Selden, brimful of ancient learning of every kind, in his Dissertation on the Jewish year, tells us several important things—things that are told by many others, it is true, but by no one of higher authority. We learn from him, first, that the new moon, by which the commencement of the Jewish month was fixed, was the visible new moon, or actual *phasis*, and not the astronomical or mathematical new moon; secondly, that the moon is not visible until after it has passed the sun at least nine degrees, or about eighteen hours, and under some conditions not so soon; thirdly, that the Jewish year was made to keep approximately abreast the natural year by occasionally adding an additional month—Ve Adar—to the outgoing year; fourthly, that the first month, Nisan, must come in the spring, so as to make the first ripening grain, or first fruits (according to the course of vegetation in Judea) available for the feast of the Passover; fifthly, that the month commencing with the new moon nearest to the vernal equinox was normally the first month, or Nisan; for it was a rule, derived from old tradition, that the full moon of the first month must never occur before, but might occur on or after

the vernal equinox; and if it would otherwise occur before, an intercalary month must be inserted, so as to lengthen the outgoing year; sixthly, that if vegetation was very late, or the spring backward, so as to prevent the grain from ripening or to make the roads leading to the city impassable, the Sanhedrim had the power to insert an intercalary month even when it was not regularly required by the time of the equinox. These things render the Jewish year somewhat less certain than the Greek year, which was governed by the fixed cycle of nineteen years invented by Meton. Nevertheless, as this cycle brought the beginning of the year as it should be, so far as the equinox was concerned, it was probably rarely departed from. Dean Prideaux is of an opinion that the Jews in the time of our Saviour, observed the Metonic cycle, or a larger one of eighty-four years, which included it, and did not differ from it during the first forty years of the first century (Prideaux's, Anno. 162 B. C.).

Now, taking the roman calendar as the standard of comparison, and the longitude of Jerusalem (35 deg. 18 min. 30 sec. E.) as the point for regulating time, and midnight as the commencement of the day, it is found by calculation, based on the ordinary astronomical tables, that the vernal equinox in the former half of the first century occurred in the afternoon or evening of 22d March. Therefore, the full moon of Nisan ought not to happen before that day, and the preceding full moon ought not to happen before the 7th of March. Therefore, the new moon, marking the 1st of Nisan, must happen between the 7th of March and the 7th of April.

Next it is found by like calculations, that the astronomical new moons nearest to the vernal equinox for the years 27 to 35, inclusive, were respectively as follows:

A. D. 27. Wednesday, March 26, at 7 h., 47 m. A. M.
28. Sunday, March 14, at 2 h., 12 m. P. M.
29. Saturday, April 2, at 7 h., 32 m. A. M.
30. Wednesday, March 22, at 7 h., 51 m. A. M.
31. Sunday, March 11, at 0 h., 26 m. P. M.
32. Saturday, March 29, at 10 h., 2 m. A. M.
33. Thursday, March 19, at 0 h., 38 m. A. M.
34. Monday, March 8, at 5 h., 24 m. P. M.
35. Sunday, March 27, at 5 h., 53 m. P. M.

From this table it is apparent that in A. D. 27 the new moon which occurred on the 26th March was first visible (according to Selden's rule) on Thursday evening, March 27th, when the first of Nisan commenced and continued until sunset of Friday evening, March 28th. For our purpose the first of Nisan was *Friday*, March 28th. And in like manner, attending to the respective times of new moon in the other years contained in the table, it is equally apparent that the 1st of Nisan occurred in A. D. 28, Tuesday, March 16th; in A. D. 29, Monday, April 4th, in A. D. 30, *Friday*, March 24th; in A. D. 31, Tuesday, March 13th; in A. D. 32, Monday, March 31st; in A. D. 33, either Friday, March 20th, or Saturday, March 21st (uncertain which); in A. D. 34, Wednesday, March 10th and in A. D. 35, Tuesday, March 29th. The moons here taken for the month Nisan exactly agree with the cycle before referred to.

Thus we see that there were only three years from A. D. 27 to A. D. 35 inclusive, in which the first of

Nisan, and consequently the fifteenth of Nisan, happened on Friday; and these were A. D. 27, 30 and 33, the last of which is very doubtful. But we have seen that the Crucifixion could not have happened before A. D. 28, and probably not later than A. D. 31. Therefore, the year 30 is the only one which satisfies all the conditions of the problem; it does satisfy them, because it gives opportunity for Jesus to teach publicly for about three years, and to attend three Passovers during his ministry, or four, according as it commenced before or after April, A. D. 27.

Now, since in A. D. 30, the first of Nisan fell on Friday, the 24th of March, the 15th fell on Friday, the 7th of April, which, therefore, was the day of the Crucifixion.

This conclusion is adopted by the majority of writers of authority, amongst others by Dr. William Thompson, in the article "Jesus Christ" in Smith's Bible Dictionary—an article prepared with much care and learning. Some years ago I arrived at a different conclusion, in favor of the year 33; but whilst it is very doubtful whether the 15th of Nisan fell on Friday of that year, it does not agree with Christ's age and ministry. I was misled by overlooking the double reckoning of the years of Tiberius.

[New York *Evangelist*, October 18, 1883.]

## THE DATE OF THE CRUCIFIXION.

BY HON. JOSEPH P. BRADLEY, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

MR. EDITOR:—Will you please insert the following correction of my article, published in your paper on the 28th of June last, on the date of Christ's Crucifixion? On re-examining my calculations of the time of New Moon in March and April, A. D. 27-35, to ascertain the first Nisan of these years, I find that I committed a slight error in not adjusting astronomical time (which begins at 12 noon) to civil time, by adding 12 hours in each case, as I should have done. This would make the true time of New Moon for the several years twelve hours later, as follows:

A. D. 27. Wednesday, March 26, at 7 h., 47 m. P. M.
28. Monday, March 15, at 2 h., 12 m. A. M.
29. Saturday, April 2, at 7 h., 32 m. P. M.
30. Wednesday, March 22, at 7 h., 51 m. P. M.
31. Monday, March 12, at 0 h., 26 m. A. M.
32. Saturday, March 29, at 10 h., 3 m. P. M.
33. Thursday, March 19, at 0 h., 38 m. P. M.
34. Tuesday, March 9, at 5 h., 24 m. A. M.
35. Monday, March 28, at 5 h., 53 m. A. M.

This correction does not alter the result, except to make it certain that the first of Nisan (and consequently the 15th) could not have happened on Friday, in the year 33, which was before stated as uncertain; so that the years 27 and 30 were the only years in Pilate's time in which the 15th of Nisan fell on Friday. I assume now, as I did then, that the moon must be at least eighteen hours old before it can be seen by the naked eye.

[New York *Evangelist*, November 1, 1883.]

## DAY OF THE CRUCIFIXION.

BY HON. JOSEPH P. BRADLEY, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:

MR. EDITOR:—I am constantly receiving newspaper articles to prove that the Crucifixion took place on Thursday, the 14th of Nisan instead of Friday, the 15th, and a challenge to discuss the subject. But I have neither the time nor the inclination for any controversy on the point. I assume that it occurred on Friday the 15th, in deference to the almost unanimous traditions of the Church (on which the fast of Good Friday is founded), and on what I conceive to be the plain meaning of the Gospel account. But it is indifferent to me which theory is adopted. It is as true of the one as the other, that (leaving out the year 27, which is inadmissible on historical grounds) there was only one year in Pilate's administration in which the event could occur, and that was the year 30, for it is as true that in that year only the 14th of Nisan fell on Thursday, as that the 15th fell on Friday. The astronomical argument is equally demonstrative of both hypotheses. I entered into no argument of the subject and shall enter into none. Those who are convinced that the day was Thursday the 14th, are entirely welcome to their opinion as far as I am concerned. If they could prove that it was Wednesday the 13th, it would be equally satisfactory to me. What I attempted to show was that according to the Jewish Calendar, as regulated by the New Moons and the Equinox, there was a year in Pilate's administration, consistent with all the historical dates, in which

the 15th of Nisan fell on Friday, the day commonly understood as that on which Christ was crucified, and that year was A. D. 30. This I think was proven to a demonstration. If this position is established, it follows as a corollary, that in the same year the 14th of Nisan fell on Thursday. My object in making use of astronomical data, was to bring the Jewish Calendar and the succession of weeks into co-relation with the Roman Calendar within the period in which the Crucifixion could possibly have taken place. That co-relation is independent of any theories as to the particular day on which the event occurred. I do not think that any writer has attempted what seemed to me to be a very necessary work—indeed the grand work of all theories on the subject, namely, the construction of a comparative calendar for the periods embracing the possible epoch of the Crucifixion, and an explanation of the principles on which such a Calendar is to be constructed. Having this basis and ground work to go upon, any number of theories may be built upon, but no theory is of the slightest value which does not conform to it, as some which I have seen do not.

From the data already given in my previous communications such a Calendar for the middle of Nisan in each of the years 27-35 can easily be constructed; but for the convenience of those who are not familiar with such things, I give it below in proper form, from which it will be seen that those persons who maintain that Crucifixion occurred on the 14th of Nisan, may still place it on Friday by adopting the year 33 instead of 30, as the year of the Crucifixion.

This would, however, postpone that commence

ment of Christ's ministry to a date which would not agree with His age at that time, as stated by Luke, namely, that He "began to be about 30 years of age," though it might agree approximately with the "fifteenth year of the reign of Tiberius Cæsar" (the other date mentioned by Luke), by counting the years of that reign from the death of Augustus.

COMPARATIVE CALENDAR FOR 13-17 NISAN, A. D. 27-35.

[The Hebrew days commence at sunset, preceding the Roman at midnight.]

| | A. D. 27. | | | A. D. 32. | |
|---|---|---|---|---|---|
| Nisan 13 | Wednesday, | April 9 | Nisan 13 | Saturday, | April 12 |
| 14 | Thursday, | " 30 | 14 | Sunday, | " 13 |
| 15 | Friday, | " 11 | 15 | Monday, | " 14 |
| 16 | Saturday, | " 12 | 16 | Tuesday, | " 15 |
| 17 | Sunday, | " 13 | 17 | Wednesday, | " 16 |
| | A. D. 28. | | | A. D. 33. | |
| Nisan 13 | Monday, | March 29 | Nisan 13 | Thursday, | April 2 |
| 14 | Tuesday, | " 30 | 14 | Friday, | " 3 |
| 15 | Wednesday, | " 31 | 15 | Saturday, | " 4 |
| 16 | Thursday, | April 1 | 16 | Sunday, | " 5 |
| 17 | Friday, | " 2 | 17 | Monday, | " 6 |
| | A. D. 29. | | | A. D. 34. | |
| Nisan 13 | Saturday, | April 16 | Nisan 13 | Tuesday, | March 23 |
| 14 | Sunday, | " 17 | 14 | Wednesday, | " 24 |
| 15 | Monday, | " 18 | 15 | Thursday, | " 25 |
| 16 | Tuesday, | " 19 | 16 | Friday, | " 26 |
| 17 | Wednesday, | " 20 | 17 | Saturday, | " 27 |
| | A. D. 30. | | | A. D. 35. | |
| Nisan 13 | Wednesday, | April 5 | Nisan 13 | Monday, | April 11 |
| 14 | Thursday, | " 6 | 14 | Tuesday, | " 12 |
| 15 | Friday, | " 7 | 15 | Wednesday, | " 13 |
| 16 | Saturday, | " 8 | 16 | Thursday, | " 14 |
| 17 | Sunday, | " 9 | 17 | Friday, | " 15 |

| | A. D. 31. | | | A. D. 36. | |
|---|---|---|---|---|---|
| Nisan 13 | Sunday, | March 25 | Nisan 13 | Saturday, | March 31 |
| 14 | Monday, | " 26 | 14 | Sunday. | April 1 |
| 15 | Tuesday, | " 27 | 15 | Monday, | " 2 |
| 16 | Wednesday, | " 28 | 16 | Tuesday, | " 3 |
| 17 | Thursday, | " 29 | 17 | Wednesday, | " 4 |

## INSPIRATION.

PROPHESYING—"Speaking by the Spirit of God." (I Corinth. c. xiv; c. xii:3.) Teaching of the XII Apostles, c. xi.

### "SPEAKING IN THE SPIRIT."

We can well imagine that in the early Christian Societies of Asia Minor, Greece, and even Italy, the mystic doctrines of Christianity, combined with the principles of unselfishness and high morality and charity taught as a part of the new system must have had a profound effect upon the souls of those impassionable people, and that in their religious assemblies extatic conditions of the mind should have often supervened, as indeed, is witnessed in our own times, amongst certain classes of religionists. Persons thus possessed with extatic feeling would naturally indulge in prophetic deliverances, more or less, elevated and captivating—as the subject of the possession was well or only partially instructed, and imbued with high and ennobling spiritual convictions. Such persons would be regarded as "prophesying in the spirit" and under proper restraints, their influence would greatly redound to the edification of the church and to the impression of those not yet connected with it. This class of persons had become well defined in the Apostolic age, as may be gathered from the chapters

referred to. They were still prevalent in the second century as we learn from the Teaching of the XII Apostles, lately discovered by the Metropolitan Bryennios.

Were not the ancient prophets gifted by a like inspiration? No one acquainted with the manifestations of the human mind in religious, and even in poetical directions, can fail to have observed that an illuminated and highly susceptible soul is capable of great reaches of spiritual intuition and inspired sublimity which far outstrip the ordinary operations of the human understanding. Is not this inspiration? Inspiration *par excellence*? When the mind is in this condition it is less affected by sordid and worldly motives and sees, as is seen on a death-bed, all spiritual things in a clear and steady light. The results of a life of reading, study, observation and reflection, produce a capacity of conceiving truth in its essence, morality in its principles, religion in its highest effulgence—which capacity may be brought into activity by an elevation of mind induced by temporary enthusiasm, and extatic feeling. This inspiration is seen in all branches of human thought. In the science of law the responses of a Papinian are an illustration of it in a certain degree.

April 13, 1890.

## LETTER TO AMZI DODD.

January 23, 1891.

DEAR AMZI: Yours received, with the editorial on the Transubstantiation controversy—which is very good and just. Our Puritan prejudices against Romanism are so strong that we are apt to forget that it was the only form of Christianity in the West (with a few exceptional protests) for twelve hundred years.

As to supernaturalism, there are only three forms of belief—three distinct theories on the subject, those of

1. A personal God. Creator of, but distinct from, the World or Universe, exercising a superintending care over it, with occasional manifestations (for moral purposes) of miraculous interference with the general laws of nature.

2. Such a Divine Creator, who has implanted His laws of physical and spiritual being in the system of things created, and leaves them to their own operation without supernatural interference.

3. *Pantheism*, which affirms a Divine Being whose only manifestation is in the Laws of Nature, productive of all the phenomena of the World or Universe, as its Soul or *formative principle;* in other words, that the World is God. *Atheism* is but another form of this theory, affirming that Nature alone, or an unconscious omnipotent force, with fixed eternal laws, is its own cause, and that of all phenomena.

Christianity, as an institutive religion, adheres to the first theory; as a purely spiritual religion, it admits also the second.

Yours sincerely,

J. P. B.

## INERRANT OR INFALLIBLE BIBLE.

In a letter to Amzi Dodd, who inquired as to the distinction between an inerrant Bible and an *infallible* Bible, taken in some of the debates in the Presbyterian General Assembly in discussing the Briggs case, I said that the distinction was an arbitrary one, probably to designate the two great theories of inspiration, the Theophrastic and the spiritual, the former being that every *word* of Scripture was inspired; the latter, that sacred writers were only inspired with spiritual truth, and used their own words and illustrations to express it, tinged by their environment. The inspiration of each word could only refer to the original Hebrew and Greek, and not to versions in the other languages, and the original texts were liable to errors in transcription as well as in translation, so nothing was gained by verbal inspiration unless we suppose that the copyists as well as translators were also inspired. He who inspired the letter (if it was so inspired) implanted the principle of lingual diversity in the different tribes of men and defeated His own object. Jerome, the greatest translator that ever lived, whose attention must have been frequently given to the subject, said that "*Inspiratio non constat in verbo sed in sensu.*" But I take little interest in the discussion, my views on the subject having been long settled and fixed. According to my view, the manner of revelation may be expressed as follows:

The Spirit of God moves upon the ocean of human thought, ever evolving light and truth, which concreted in words of immortal power, becomes stereotyped upon the consciousness of the nations, consecrated

by antiquity into the forms of sacred learning, and hallowed by all holy and religious associations. (End of letter.)

This view supposes that the inspiration of the Creator never ceases. The soul of man, whenever created, whether at conception or birth, or at a distant past, proceeds from the Divine Spirit, the fountain of all life and intelligence, and derives all its powers and capabilities from that source. Its spiritual knowledge, developed much more in some than in others, comes gradually to be expressed in golden sentences which address themselves to the universal consciousness and acquire general recognition and belief.

June, 1891.

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## SERMONS.

A series of interesting sermons might be written upon texts of sacred writ, which have a suggestive significance or a far-reaching application. Thus:

"One day is, with the Lord, as a thousand years, and a thousand years as one day." (II Pet. 3-8.)

This thought receives a wonderful illustration in considering the immense periods of geological time and the various phases which have been assumed by the earth, under the successive epochs of palæontological history, To the Creator it is only a moment; to our finite comprehension it seems an eternity.

"He watereth the hills from his chambers; the earth is satisfied with the fruit of thy works. He causes the grass to grow for the cattle and herb for the service of man; that he may bring forth food out of the earth." (Ps. CIV, 13-14.)

Who can look at the hills and plains of the earth, covered with grass and trees, all clothed with beauty and richness, springing with life and freshness and supporting flocks and herds and tribes of men; who can look at all this glorious envelopment without a feeling of wonder and adoration? If our sense of time could be quickened so as to make the duration of a year seem but an hour, or a minute, the earth and its vesture would appear a living thing; coming and departing vegetation would appear to move rapidly before our eyes, the assuming and putting off annual verdure, the grass of the fields and the leaves of the trees, would seem like the peaceful breathing of a person in sleep; the earth would appear a gigantic living being, invested with life and all vital motions and forces.

LITCHFIELD, July 5, 1891.

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## RELIGIOUS FORMS.

Whilst believing in the infinite mercy and goodness of God, and being confidently willing to trust to that alone, I entertain profound respect and consideration for those who trust in dogmas and theories of atonement and in church organizations and religious observances, and I would not for the world discourage them from performing their pious work. They do great good to those who cannot be affected by religious principles in any other way. Churches and preaching and prayers, and worship in every form, have wonderfully effective uses; and those who minister therein should be treated with all courtesy and respect for their sincere efforts

to benefit others and for the great good they do. "Do not wonder at these amulets," said Pericles on his sick-bed to Alcibiades, "above all do not order them to be removed. The kind old nurses who has been carefully watching over me day and night are persuaded that they will save my life. Superstition is rarely so kind-hearted; whenever she is unable, as we are, to reverence, let us at least respect her." I would not only respect, I would reverence the kind intentions of a sincere minister, and of all others who have a firm conviction in a religious creed. Whatever may be our own views, and however well settled and grounded, we cannot, without danger to society and its dearest interests, turn our backs upon the religious institutions which play so important a part in humanizing and refining mankind. No other religious belief, or disbelief, could have done so much for the elevation and refinement of the human race as Christianity has done during the last eighteen hundred years.

If we do not believe in miracles, we may well believe in the vast importance and benefit of those hoary traditions of Divine influence which have become as effective for good with the great mass of mankind as if they were based on the most certain deductions of reason and experience. When they become merged into idle superstition and the plea for cruel and proscriptive intolerance, they may be justly opposed; but when only employed for the promotion of religious and pious affections, they are of incalculable value to society. It will only be when men become perfect that positive institutions of religion can be safely dispensed with.

But there is no reason why a man of superior intelligence should allow his own spiritual equanimity

and calm trust in the Divine goodness to be disturbed. His accounts between him and his Maker are, of all things, his own affair, not to be meddled with by others. If meddled with from good or kindly motives, he can afford to indulge the intrusion with kind and grateful acquiescence. At the same time, when called to approach the presence of his infinite and beneficent Creator, he can do so with a feeling of sure dependence on His paternal love. He may have been erratic and offending, but he is a child, and may at last rely on his Heavenly Father's paternal love.

June, 1889.

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## DANGER OF ABROGATING RELIGIOUS FORMS.

Suppose the guesses of Science are true, and that creation has proceeded by a process of development for countless ages, producing species and genera one after another, and proceeding gradually from rude to high and delicate organizations—according to laws implanted in the system which we call nature and the world—without any direct intervention of a separate intelligence and without any direct communication from such intelligence of the principles of knowledge or duty; these being left, like all else, to be developed by natural causes, by reason and experience. Suppose all this to be true. Is the world ripe for such knowledge? Evidently not. Ages must yet transpire. Too many are interested in the support of existing systems, and the masses are too little developed in moral perception and principle to make it safe to abandon the artificial methods and sanctions by which order is maintained. Resistance to the prejudices of mankind only injures

him who offers it. If a community imposed the penalty of death for wearing scarlet, none but a fool would put it on. Until the world is ready for the truth, it is not safe to communicate it, except to the select few who can be trusted to embrace and guard it; that select few who are governed by inherent and unbending rectitude. The wise man will continue to respect and observe the laws, usages and modes which prevail, and which society regards as essential to the conservation of order and morality. Mankind in general can only be gradually awakened to truth. The light of science will, in the end, quench the farthing candles of error and superstition. But the time cannot be hastened by violence. So long as the moral and social habiliments which men choose to wear are productive of good and not of evil, it is not necessary for one to seek martyrdom by a bold declaration of the whole truth. Let such cherish it in his own bosom without thrusting it offensively upon others. Like the little leaven hidden by the housewife in the meal, it will gradually, but surely, permeate the whole lump. At present, however, the existing institutions are productive of good, and therefore necessary. To overthrow them would be to overthrow morality. In cutting loose from established forms, one is apt to cut loose from the standards of duty themselves, and is in danger of running into wild and fathomless speculation. These standards are the result of ages of human experience, and ought to be regarded as sacred as if directly communicated by a personal Deity. The fiction that they were so communicated may give them additional power over feeble intellects, and should not be rudely dispelled from their imaginations. A wise man,

therefore, will not only tolerate, but continue to observe, the forms of religious and moral practice—not because founded on supernatural sanctions, as is pretended, but because they have been found of great use in preserving and inculcating the principles of order and duty, on which all human happiness is based.

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## THE SABBATH AND SUNDAY.

The injunction to keep holy the Sabbath, though included in the ten commandments, is not an obligation of natural law, but was a special regulation imposed upon the Israelites as a nation; and, therefore, it is not of perpetual or universal obligation. It was not adopted as an institution of Christianity, but was expressly repudiated as such. The early Christians, desirous of having a set day for religious assemblies, as well as for a festival, selected the first day of the week; first, in order to show their repudiation of the Sabbath; secondly, as a memorial of Christ's resurrection. But, aside from meeting together for worship, and enjoying the day as a festival, they attached no religious sanctity to it inconsistent with the pursuit of their ordinary avocations and amusements. It was not until later times, when the ecclesiastical spirit became more dominant, that it was enforced as a Sabbath.

In support of these propositions we might rely on the authority of the learned Selden, who treats of the Sabbath in Book III, cc. 19-23 of his work, *De Jure Naturæ et gentium apud Hebræos;* also of Milton in his posthumous publication, *De Doctrina Christiana.*

But it is more satisfactory to refer to the original sources of authority. Let us look first at the original institution of the Sabbath amongst the Israelites. We hear nothing of its observance as a religious day until the fall of manna in the desert of Sinai, related in Exodus, c. XVI. The people were told to gather enough on the sixth day of the week to suffice for the seventh, on which day they were directed to rest. (vs. 22-30.) The Egyptians, it is true, had used the hebdomas, or seven-day division of time for ages prior to this period, as shown by hieroglyphical inscriptions, and as testified by Dio Cassius; it being a quarter of the period taken by the Moon in passing through the signs or Chambers of the Zodiac; and they called this quarter, or hebdomas *Uc*, nearly the same as the old Saxon Wuc (week); and they had named the days of the week from the planets, Sun, Moon, Mars, Mercury, Jupiter, Venus and Saturn, in the order here given, being the same order afterwards adopted by the Hindoos, and still later by the Romans, and which still prevails with us. The Israelites rejected these names as savoring of idolatry, and designated the days by number only, except the seventh, which they called the Sabbath. But there is no evidence that either of these days of the hebdomas had been set apart for religious purposes, or as a Sabbath, until it was so done amongst the Israelites; although Hesiod, in enumerating the days of the lunar month, calls the seventh day "the sacred seventh," which may be an allusion to some archaic traditions on the subject.

A short time after the fall of manna had commenced, the ten commandments were given to the Israelites at Mount Sinai; but they were given to them

as a national written law, and were of no further obligation upon other nations than as they embodied or expressed the natural law. With the exception of the injunction to keep holy the Sabbath, they are of this character, and as such were summarized by Christ (quoting Deut. VI, 5 and Levit. XIX, 19) in the two great fundamental precepts—to love God supremely, and our neighbor as ourselves. Matt. XXII, 37; Mark X, 19-20; Luke X, 27. That the law of the Sabbath was special and national is shown in Deut., c. V, where the ten commandments are recapitulated; and where the reason given (v. 15) for the institution of the Sabbath is peculiarly national: "Remember that thou wast a servant in the land of Egypt, and the Lord thy God brought thee out hence through a mighty hand and a stretched out arm; *therefore*, the Lord thy God commanded thee to keep the Sabbath day." In Exodus, c. XXXI, v. 13, when the keeping of the Sabbath is enjoined, the reason given is, "for it is a sign between me and you throughout your generations," and in verse 16 it is added, "wherefore the children of Israel shall keep the Sabbath, etc., *for a perpetual covenant.*"

When Christ commenced preaching the new dispensation for all mankind, he evidently repudiated the Jewish idea of the Sabbath. When he enumerated the commandments which the young ruler was to keep in order to have eternal life, the command to keep the Sabbath was not mentioned. And that this is no slip of the pen, or omission of the historian, is evinced by the concurrent relation of three Evangelists (Matt. XIX, 18; Mark X, 19; Luke XVIII, 20). Christ also availed himself of repeated opportunities of

showing His opinion of the Sabbath. Notwithstanding the disapprobation of the Jews, He, on that day, healed the sick, cured the blind, and allowed His disciples to gather food, telling His hearers that it was lawful to do good (that is, any good act) on the Sabbath day; that the Sabbath was made for man and not man for the Sabbath; and that He, the Son of Man, the Representative of Humanity, was Lord even of the Sabbath day, thereby clearly indicating that the institution, so far as mankind in general are concerned, was subject to Human regulation and subservient to human happiness. (See Matt. XII, 1-13; Mark II, 23, III, 5; Luke VI, 1-10, XIII, 11-17, XIV, 1-6; John VII, 23, IX, 13-16.)

About eighteen or twenty years after Christ's death, when large numbers of Gentiles had been added to the church, the question came squarely up, whether the laws and observances of Moses were to be binding on Christians. (Acts c. XV.) A solemn Assembly, or Synod, was held on the subject in Jerusalem, and after speeches from Peter, Barnabas, Paul and James, it was finally settled that none of such laws or observances were to be binding except in four specified matters, of which the Sabbath is not one. The Christians in Judea, it is true, being mostly Jews and always accustomed to conform to those laws, still observed them, and were even zealous about them. (Acts XXI, 17–18.) And many Jewish converts in other countries endeavored to inculcate the obligation of these laws, which would have had the effect of reimposing the yoke of servitude, in ordinances, from which Christians had been authoritatively freed. This became the occasion of frequent

and vehement animadversions on the part of Paul, and constituted the burden of several of his epistles. Thus, in his Epistle to the Colossians, writing on this subject, he conjures them not to let any man beguile them with enticing words (II, 4); that, as they had received Christ (that is, the doctrine of Christ), so they should walk therein (v. 6); reminding them that Christ had blotted out the *handwriting of ordinances* (v. 14); and he enjoins them to let no man judge them (that is, call them to account) on the subject of *meats, drink or holydays*, or *new-moons* or *Sabbaths*, which he declared were mere shadows of things to come, Christ being the body or substance (vs. 16-17). Again, in Romans, c. XIV, 1, he inculcates the utterly unessential character of these ordinances—"Him that is weak in the faith, receive ye, but not to doubtful disputation. For one believeth that he may eat all things; another, *who is weak*, eateth herbs. Let not him that eateth despise him that eateth not, and let not him which eateth not judge him that eateth," etc. One man esteemeth *one day above another; another* esteemeth *every day alike*. Let every man be fully persuaded in his own mind." These passages show that the observances of Sabbaths and holy days was reckoned in the same category as the prohibition to eat certain meats. The principal burden of the Epistle to the Galatians is this very subject of Mosaic ordinances and the abolition thereof by the death of Christ. The Judaizing teachers had produced a sensible impression upon the Galatean converts. It is in reference to this that Paul bursts out in that notable exclamation, "O foolish Galatians, who has bewitched you?" etc. The great lesson of the Epistle

is, that Christ had freed his followers from the law of Moses and had established a spiritual and practical religion whose essence consisted in faith, love and good works. (See the whole of the fifth chapter).

It seems clear, therefore, that the great leaders of the Christian movement regarded the Sabbath as no longer a binding institution.

The question remains as to the rule and practice of the early church with regard to the first day of the week, or Sunday.

It is certain that from the earliest times (after Christ's death) the Christians were in the habit of meeting together on this day for worship, and also of keeping it as a festival in remembrance of Christ's resurrection. But it is equally certain that the day was not kept as a Sabbath. To have kept it as such would have been repugnant to the Christian idea of freedom from Mosaic burdens and ordinances. Subject to the duty, or privilege, of meeting for worship, there is no evidence that the early Christians did not feel authorized to pursue their ordinary avocations and amusements on that day. Its dedication to public worship and festal enjoyment was not by commandment, but by choice and general consent. In later times its more stringent observance was inculcated by ecclesiastical authority or by civil laws enacted under ecclesiastical influence.

A reference to some Scripture passages will show how its use probably originated. Christ, as before stated, rose on the first day of the week; and that evening He appeared to the Apostles, who were assembled together in a closed apartment for fear of the Jews. (John XX, 19.) A week later they were

again assembled, and Christ again appeared to them, on the occasion when He upbraided Thomas for his want of faith. (John XX, 26.) It is probable that the Apostles and more prominent disciples continued to meet on this day, since we find that a few weeks later they were so met on Pentecost (which occurred on the first day of the week) (Levit. XXIII, 16), on which occasion the Spirit was miraculously communicated to them. This appears to have been the remote origin of the Christian use of the day. The Apostles often frequented the synogogues on the Sabbath, it is true, because it gave them an opportunity of addressing the Jews; but the general practice of the Christians themselves undoubtedly was to meet for worship on the first day. Thus we are told that Paul, on one of his missionary tours, came to Troas and tarried there seven days, and "upon the *first day* of the week, when the disciples were together to break bread, Paul preached unto them." (Acts XX, 7). About the same time, writing to the Corinthian Christians, and amongst other things urging them to contribute to the donations being made for the suffering Christians in Judea, he said: "On the first day of the week let every one of you lay by him in store, that there be no collections when I come." (I Corinth. XVI, 2.) In fine, before the completion of the New Testament Canon, the day had become so marked by custom and usage that it received the appellation of "Our Lord's Day" (*Dies Dominicus.*) The author of the book of Revelations uses the expression "I was in the Spirit on the Lord's day." (Rev. L, 10.)

The general testimony of antiquity and tradition of the Fathers of the Church are to the effect that the

day was habitually used as above stated. I think Tacitus says that the Christians were in the habit of meeting together and singing divine hymns on that day.

The first civil regulation on the subject of the observance of Sunday was made by Constantine in the year A. D. 321. As this Ordinance, or Constitution, as it is called, probably shows the general Christian sentiment at that period with regard to the proper mode of observing the day, a translation of it is appended, together with a second ordinance by the same Emperor, and an abstract of subsequent Roman laws. It will be perceived that after Christianity became the religion of the state, and the power of the Ecclesiastics consequently increased, the regulations grew more and more strict.

IMPERIAL CONSTITUTIONS.

1. *By Constantine, March, A. D. 321.* "All judges, inhabitants of cities and artisans shall rest on the sacred day called Sunday (*die Solis*). But those in the country may freely and lawfully attend to the culture of the land, since it often happens that corn cannot be committed to the furrows, nor vines to the ditches, so well on any other day; and we should not permit the blessings of heaven to fail by neglecting the favorable moment."

(Code Justinian, B. III, tit. 12).

2. *By the same, June, 321.* "Though we have deemed it improper that Sunday, a holiday of peculiar sanctity, should be occupied in contentious litigation between parties; yet it is our pleasure that on that day those things may be concluded which are, in

themselves, highly desirable; and, therefore, on this festival all persons shall have liberty of emancipation and manumission; and no legal proceedings to that end shall be prohibited. (Codex Theodos. II, 8).

WESTERN EMPIRE.

3. Valentinian the Elder, A. D. 368, decreed that no taxes should be collected from Christians on Sunday. (Codex Theodos. VIII, 8).

Valentinian the Younger, A. D. 386, decreed that all legal proceedings whatever and all business generally should cease on Sunday, which (it is added) "Our ancestors properly called the Lord's day." (Code Theod. VIII, 8-3).

EASTERN EMPIRE.

4. Theodosius the Great, A. D. 379, forbade the exhibition of shows on Sunday. (Codex Theodos. XV, 5-2). And Theodosius the Younger, A. D. 425, extended this prohibition to all the cities of the Empire. (Code Theod. XV, 5.)

As a matter of general history, it may be asserted that the practice of Christendom, as to the observance of Sunday, corresponded for the most part with the character of the day which we have endeavored to describe. It was always the practice to celebrate public worship on Sunday and to devote the rest of the day to festal purposes, amusements and social gatherings. It was only at a late period, after the rise of Puritanism in England and Presbyterianism in Scotland, that in those countries the day was converted into a strict Sabbath. This resulted from the Puritan theory that the Old Testament church, by way of

symbol or type, contained within it all the essential elements of the New Testament church, and that all precepts and observances not expressly abrogated are still binding. Hence they recognized the perpetual obligation of the fourth commandment, respecting the Sabbath, as well as of the other commandments, admitting only the change of the day from the seventh day of the week to the first. The Continental theologians called this theory the English Fiction (*Figmentum Anglicanum*). It was carried to a greater extent, if possible, in New England than it was in the mother country. Cotton Mather refers to a correspondence on the subject between Rev. John Howe, the great Puritan divine and the Apostle Elliott, in which the latter complained of the laxity which prevailed in England in the observance of the Sabbath. He contended that it was not enough to devote the day to religion in the same manner as the other days are devoted to labor and worldly pursuits; but the Christian's whole being should be consecrated to holiness continually on that day, without even permitting the thoughts to wander upon secular subjects. One of the charges against Archbishop Laud was advising the King to publish his declaration for the use of sports on the Lord's day. His answer was (inter-alia) that the "declaration only allowed *lawful* recreation, which is no more than is practiced at Geneva." (Neal's Hist. Puritans, Vol. II, 146). The Commons replied, that though Calvin differs from our Protestant writers about the morality of the Sabbath, yet he expressly condemns dancing and pastimes. (Ib.)

We are fond of condemning Catholics and others for subverting the express commands of Christ and

his Apostles by their traditions and ceremonies. Perhaps a little more candor would reveal a very large mote, if not an actual beam, in our own eyes.

## PART II.

What has thus far been said on the subject of the Sabbath and on the observance of Sunday, presents but one side of the question; it shows us what is *not* the true Christian idea on the subject, but does not show what the positive duty of the Christian is. In order that the conclusions arrived at may not be misunderstood, it is proper to look for a moment at the other side of the question; for it is of great importance, both to ourselves and in reference to our influence upon others, that we should clearly settle in our own minds what are the proper duties of that day which even in Apostolic times, as we have seen, was called "the Lord's day." Paul said, "Let everyone be fully persuaded in his own mind" on this very point, intimating that we should have fixed convictions in relation to it.

What conclusion, then, ought we to form with regard to the mode in which Christians ought to keep the day? Are they, in view of what has been said, to disregard it altogether and make no distinction of days, as some did not in Paul's time? This by no means follows. It is true, as we have shown, that its observance is not imposed upon us as a *Sabbath*, by which is to be understood a day so sacred that no secular work or act whatever can be done, and no diversions can be indulged in on that day without sin. But without making it such a burden as this, so utterly inconsistent with the idea of

Christian liberty, we are nevertheless bound to regard with the greatest deference the practice of the early church and of common Christendom. We cannot cut ourselves loose from all ecclesiastical usages and order without repudiating the organized form of the Christian society. Whilst it is not only lawful, but a duty, to scrutinize the foundation of the observance, and to show, if such be the fact, that it is not by Divine command, but the result of the consentaneous act of the early Christians, and whilst we may properly reject the Judaical notions which have been attached to it by Puritanical zealots, utterly at war as they are with Christ's and Apostolic ideas, there still remain strong reasons why, as a Christian people, we should set the day apart for public worship, for rest from the toils and cares of ordinary life, and for purposes of social and festal enjoyment. Thus observed it is indeed a blessing, as well as the means of promoting civilization and Christianity. It is a most gladsome sight to the philanthropist, as well as the Christian, to see all people of every degree, the poor as well as the rich, cease from sordid and worldly occupations on one day of the week, and come forth, old and young, in clean and holiday attire, and with glad faces go together to the house of prayer and perform their devotions; and it is but a surly sort of piety that grudges to see them spend the balance of the day in harmless festivity and neighborly sociability. The Lord's day thus observed is a bright spot in human life. It elevates the moral character and susceptibilities; it humanizes, it civilizes, it refines. It teaches to think, it promotes social intercourse, it takes away the coarseness, the roughness, the rusticity of those who would otherwise be secluded from softening influences.

As a means of social elevation and progress, as well as of religious improvement, its influence cannot be adequately estimated. I yield the precedence to no champion of sabbatical ideas in imputing to the due observance of Sunday as a holyday, such as described, the most important part in the cultivation and support of virtue, intelligence and refinement and in the discouragement and suppression of vice.

To the sanctions and usages of the church must be added, in estimating the question of duty, the regulations on the subject which are made by the law of the land. These, at the present time, are generally in accord with the true character of the day. Whilst imposing no positive act to be done, the law simply requires the cessation of ordinary employments and of those diversions and practices which would disturb the peace and quiet of the day (so essential to the value and beauty of the institution), or which lead directly to the practice of vice. If the laws attempt more than this, they generally but express the unwise zeal of those who made them, and by being unnecessarily severe, defeat their own purpose.

That civil society has a right to enact wholesome laws on the subject is manifest both from the sayings of Christ and from the incalculable benefits which society derives from the institution. The sayings of Christ referred to are those which have been quoted in the first part of this essay: "It is lawful to do good on the Sabbath day;" "the Sabbath was made for man, and not man for the Sabbath;" "The Son of Man is Lord even of the Sabbath day." Applying the spirit of these remarks to the institution of Sunday, and they express all that I contend for on this subject.

The conclusion, therefore, is, that as an institution of the church and of civil society, we cannot afford to ignore as a duty the observance of Sunday, in the manner above described, not making it like the Jewish Sabbath, a burden upon our consciences and our liberty. Having performed the religious duties of the day, according to ancient Christian usage, we are free to enjoy social converse and harmless festivity, or the beauties of nature or art; and if imminent cause requires, we may rightfully do those things which are necessary to prevent the destruction or injury of life or property. To enjoin the contrary would be to put a strain upon the conscience which would result in greater harm than good.

The question has often been raised whether the observance of Sunday as a day of rest is a precept of the common law. In Hawkes' Grounds of the Laws of England (1657) is laid down this maxim: *Dies Dominicus non est dies juridicus.* The Sabbath day is no day for the law; as upon a Fine levied by Proclamations according to the statute of 4 H. 7, c. 24. If any of the proclamations be made on the Sabbath day, all the proclamations be erroneous, for the Justices must not sit upon that day, but it is a day exempted from such businesses by the common law, for the solemnity of it, to the extent that the people may apply themselves that day to the service of God. (5 Cru. Dig. 99.)

"No plea shall be holden *quindenæ Pasche*, because it is always the Sabbath, but shall be *Crastino quindenæ Pasche.* Fit. Nat., fo. 17 f.

"Teste of Sci. Fa. upon Sunday is error. Dyer 168.

"No sales upon a Sunday shall be said to be a sale in market overt to alter the property. 12 E. 4.8.

"Ministerial acts are allowed, as to arrest or serve process, otherwise peradventure they should not be executed, and God forbid that things of necessity should not be done on that day, *for bonum est* bene facere die Sabbati."

"*Dies Dominicus non est juridicus.*" Co. Lit. 135. 2 Saund 291. Wingate's Max. 5. Noys' Max. 2 (5th Ed.) Exercising trade of butchers no offence at common law. I Stra. 702. Noy. 2 (Ed. 5). Finch's Law, 3 b. No proceedings in a suit can be entered as done on a Sunday without making all void. 2 Inst. 264. 3 Buv. 159.

(See further as to English Law on the subject, 11 Rep. 65. Finch L. 7; 1 Atk. 58; 1 T. R. 265; Com. Dig. Temps (B. 3) 20 Vin. Abr. 61; 4 Bl. com. 65; 1 Hawk P. C. 11; 3 Burns Just. 106; Broom's Max. 21, 3 D. & L. 328, 330 Docd. Williamson *vs.* Roe, 3 D. & L. 328).

The question whether Christianity is part of the common law is discussed by Mr. Jefferson in an appendix to his reports, and rediscussed in a letter to John Adams dated January 24, 1814 (Works, Vol. VI, 302-305), and in a letter to Ed. Everett, Oct. 15, 1824 (Works, Vol. VII, 380-383); also, in Blakely's "State Papers on Sunday Legislation," 127-141.

Mr. Jefferson says that all the *dicta* that Christianity is part of the common law take their origin from an observation of *Judge Prisot* in a case in C. B. 34 H. 6, fo. 38, in which it was a question how far the case (being up on a right of presentation) was to be governed by the Eccl. Law, and he said: "To

such laws as they of the Holy Church have in ancient writing (ancient scripture) we ought to give credence; for so is the common law on which all manner of laws are founded." The Judge here did not refer to the Bible or Holy Scripture, but to the ancient writings by which the Ecclesiastical Law was known, yet by a strange misinterpretation it was supposed that the Holy Scriptures, and hence the whole Christian religion was meant; and subsequent writers and judges refer to Prisot as laying down this doctrine, which is totally without foundation.

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## ON THE EXISTENCE OF A GOD.

Is, or can there be, such a thing as a *principle* without a *subject?* And as we know from the testimony of our own consciousness that there are such principles as justice, truth, equality, etc., without and independent of ourselves, is not this the reason why the mind clings to the idea of a God—a substance (to speak figuratively) to support and give existence to these spiritual qualities? We cannot conceive of their existing independently of any subject. That great Being from whom we spontaneously infer that they flow, we call God.

[As touching the above reasoning, we give the following unknown quotation—with Judge B.'s comment]:

"Since there must have been something from eternity because there is something now, the Eternal Being must be intelligent because there is intelligence now (for no man will venture to assert that nonentity can

produce entity, or nonintelligence, intelligence), and such a Being must exist necessarily, for it is no more possible to conceive of an infinite than a finite progression of effects without a cause."

"Did you ever see anything more perfect that this?"

J. P. B.

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## ESOTERIC THOUGHTS ON RELIGION AND RELIGIONISM.

On this subject my views have undergone considerable modification within a few years past. The discoveries of modern science have rendered some of our orthodox notions untenable. But I feel that it is necessary to guard against that laxity of principle which is too apt to follow an abandonment of former convictions. When the mind becomes unsettled with regard to its traditionary forms of faith and observance, the danger is that it may cast loose from the principles of morality itself. This gives rise to the *argumentum ab inconvenienti* which constitutes the strongest bulwark of dogmatism against the assaults of truth. I, therefore, once for all, protest that whatever modifications my views of the theoretical and speculative part of religion may have undergone, I do not abate one jot or tittle from the claims of religion as a principle of action, the sanctity of the moral law, or the necessity of aids and appliances for cultivating the moral nature and promoting moral purity. *The result of the ethical consciousness in man, no matter by what sanctions encouraged and enforced, has been the construction of a profound system of moral and*

*social laws, which is to be held sacred and inviolable. This may justly be deemed the expression of Divine Law, because evolved from the Spiritual exercise of a being proceeding from the Divine hand and informed by Divine gifts, although engaged in an arduous struggle with sordid and deteriorating influences.* Whilst this *law* is enforced with terrible directness and uncompromising earnestness in the Holy Scriptures, a large portion of its code is also found in the recorded thoughts of the nations called heathen.

But, first of all, we should aim to get clear notions of what the essence of religion is.

We have been taught that the chief end of religion is to avoid eternal misery and obtain eternal happiness. But, in my judgment, its true object is to make men better, or rather, to make them good—a word which includes every virtue. If this is attained, the future may be left to take care of itself, and should, at least, excite no fears. Religion inculcates piety towards God and man, and is summed up by Jesus Christ in love to God and man. It has been well defined as the recognition of God as an object of worship, love and obedience, and, secondly, as the state of mind resulting from and in harmony with such recognition. Some have called it the effort of man to perfect himself. But the word "religion" is used in many senses: *First*, for the bond of relationship between God and man, and the duty of man arising therefrom. This is religion considered objectively, but still apart from outward observances. *Secondly*, it is used to express the condition of the human heart and life when in harmony with this relationship; or religion considered subjectively in man. St. James speaks of this when

he says, "Religion (religio) pure and undefiled before God the Father is this: to visit the fatherless and widows in their afflictions, and to keep himself unspotted from the world." And Verrius Flaccus, before James, had said, "The religious man not only reverences the Gods, but is kind and obliging to men." (Deorum sanctitatem magni æstimaus-officiosus adversus hominus) (Festus, verb. Religiosus). *Thirdly*, The word religion is used to designate the systems of faith and worships adopted and used by different people and sects. These are the formulas and ceremonies by which men have endeavored to preserve and promote religious and moral culture in the world. They may often have been perverted to subserve private interests, avarice or ambition, but they have no doubt had a beneficial effect in impressing the body of mankind with religious convictions more or less useful.

There is hardly a people on earth so degraded as not to have some religion. A recognition of some Superior Being who controls human affairs and whose favor is desirable is indigenous in the human breast. It seem to be the inference which the reason of man draws from the felt necessity of a primary cause and from his longing for something better, more stable and more just than what he sees. The notions entertained about the character of this Being, his relations to us, and the means of appeasing him, are as various as the circumstances which have surrounded the different races and nationalities. In all, however, the general idea is that of one to be worshipped, obeyed and propitiated.

Without some notion of an ideal of goodness represented in a Superior who observes and approves

or disapproves our actions, it is difficult to keep up any sustained effort at self-improvement. The indulgence of appetite, passion, dominion and ease is the strongest and most constant tendency of our nature. An innate struggle after perfection is the gift of but a few noble and exceptionable mortals. When they arise it is their mission to elevate the race. But they can only lead upward the common herd by pointing to the Divine Powers which bring the morning sun and the refreshing shower, the terrible thunder, the awful earthquake. A belief in an officious God is absolutely necessary to elevate and purify the masses.

Whilst, therefore, we believe that the essence of religion consists in goodness, virtue, and moral perfectness, we must still recognize the ability, if not the necessity, of a concrete form of faith and worship for mankind in general. To an individual man it may not be necessary. A creed, a dogma, an article of faith is no more of the essence of religion than a proposition of geometry is such. Both may be expressions of abstract truth, well to know and profitable to believe. But whether, for example, I, as an individual, believe, or do not believe, in the existence of a personal devil, or a burning hell, does not touch my religious character. I may be just as religious subjectively, just as reverent toward God and benevolent toward men, with or without this belief.

The dogmas which one religion requires us to accept may be nearer the exact truth than those of another; and yet the purpose of religion may be better subserved by the latter than the former; though, of course, this would be an exceptional result. It is best to believe what is true, as well as desire what is good.

But we must not suppose that a particular religion is useless or pernicious because it inculcates some errors. What religion is free from errors? As no two religions are entirely alike in their articles of faith, it would be great arrogance for any one to set itself up as absolutely infallible. I know that the devotees of each think theirs is so, but no sensible or thinking man admits the justness of such bigoted notions. We will find some bad as well as some good in all religions; and we will also find that almost all subserve a useful purpose in preserving amongst mankind a sense of Divine Presence, Power and Goodness, and of something to live for superior to the sordid objects of vulgar life.

But as the religions of different people in the same age greatly differ in the moral effects which they produce, so it is most natural to suppose that, in different ages, as men rise in the scale of intelligence and refinement, religious ideas, as well as other departments of thought, become more elevated and enlarged. It cannot be that this department of human consciousness should be forever fixed in a cast-iron vesture incapable of development or change. The great variety of excellence which prevails in actual religions is proof to the contrary.

In every other science there is progress, why should there not be progress in religious science? Are we forever to look for our models of faith and duty in the patriarchs, who believed God to be the special guardian of Palestine and of a particular family, and to have corporeal limbs and features; and who thought it pleasing to him to cut off the hands and feet of their enemies, and to rob them of their possessions

without provocation? Yet we must do this if we accept the theory that revelation of Divine truth was miraculously made to these men at first hand and has never been made except through Hebrew prophets and seers. Is it not more consonant to the Divine beneficence, to its manifestations in the natural world, and to what we know of the facts in the progress of humanity itself, to look for this revelation on every hillside and in every valley where wells of moral purity and freshness have sprung up; and in the accumulations of spiritual wisdom which have been gathered together in all lands? Is God the loving father of only a single tribe, and a stepfather to the rest of his creatures, or may we not rather expect the influence of His Spirit to be breathed upon all?

The same narrow theory was once applied to nature herself. It was boldly asserted and, indeed, not to be gainsaid, that all things were made by one creative feat about six or seven thousand years ago—stratified rocks, veins of ore, growing trees with perfect annular rings, and all things else as we now see them; and that the present animal and vegetable kingdoms are the results of direct lines of ordinary generation and germination from the original forms! as though creative energy never stirred but on a single occasion, and is not always in active operation, constantly producing by the eternal and slowly grinding mills of Omnipotence endless varieties of organism exhibited in geological successions of being here, and in cosmic successions in the regions of space. But this narrow theory of a six-day's creation, the logical inference of an anthropomorphic God, has given way before the strong and

indelible characters of truth which are inscribed on every page of Nature's great Book, from the fossils of the earth to the flaming orbs and fading nebulæ of heaven.

There is in fact and in truth a strong analogy between the progress of material and spiritual philosophy. In the spiritual world, as in the material, it was but natural for the infant understanding to limit the first Cause and Governor of the Universe by the limited conceptions which it had of the Universe itself, and to make Him altogether such an one as man, only with enlarged powers and presence. No one can read the Book of Job without feeling that he introduced to the spiritual longings and gropings of a primative age, when the elements of known religious truth were few and simple. He recognizes the same fact in reading Homer, Hesiod and the early Greek dramatists. Comparing these with the luminous teachings of a Paschal, or Fenelon, or a Leighton, he would have a demonstration of progressive enlargement in the scope of spiritual insight, and would clearly see that in religious things, as in scientific, the world moves.

How prolific in spiritual discoveries and results a single germinal thought has often proved, evolved almost unconsciously, perhaps, in the sublime throes of a great spirit in a state of exaltation. "Do unto others as ye would that they should do unto you."—"Love is the fulfilling of the law," are instances. Dropping like prolific seed into the receptive consciousness of the seekers of truth, they have expanded in the next age into broader and more elevated views of life and destiny. Of this character are many of the utterances so sublimely expressed in the old Jewish

prophets. In spiritual elevation and discernment the Orientals, and especially the Hebrew prophets, were far in advance of the Greeks; whilst the latter excelled in metaphysical speculation and logic. When these two systems of thought came in contact, each found excellencies in the other which could not fail to produce useful results. It needed a seer of deep spiritual insight and great breadth of view, caught only by soaring aloft above the influences of passion and selfishness, to eliminate from the existing systems some new and better philosophy than the world had yet seen. The outward forms of the Jewish religion had become burdensome and useless. The heathen religions had ceased to command respect, even in their own seats. A new religion, more spiritual, more catholic, and better adapted to all forms of social life, and to all degrees of civilization, became a necessity of the advancing ages, and of the amalgamation of the different nationalities. Hence arose Christianity.

The foundations of such a religion as the world then wanted were laid by Jesus of Galilee, aptly called by his followers, familiar with Jewish conceptions, Messiah, Christ, the Anointed or Sanctified One. He enunciated and strikingly enforced the great central religious truth—that the heart, or the spiritual centre of man, is the *place where* righteousness, or true religion, must begin and end. If that is right, all is right. This is what is meant by Faith. The life will be evolved accordingly. The life is, and always will be, the outgrowth of the true inward nature. They are related as cause and effect and cannot be dissevered. He also taught the other great fundamental religious truth, that this inner righteousness, or true religion, *consists*

of *love*—love to God and man. The essential condition of religion, namely, sincerity, or *faith*, by which it is grounded in the inner heart of man; and the essential *nature* of religion, namely, *love;* these constituted the chief corner stones of the new religion of Christ. These are seminal truths, if not discovered, certainly placed in bold relief by Jesus of Nazareth.

It is plain that such a religion must have involved antagonism to superstitious observance. But it was only relatively, not absolutely, hostile to observances and rites. It demanded to stand first, and that observances and ceremonies (if used) should occupy but a secondary place; of no value, excepts as helps and aids of inward purity and holiness.

This was Christ's great work, sealed with his blood. He taught no dogmas but one—that God is our Father and that we are all brethren. The work of communicating the new religion to the western world fell upon Paul, a scholar versed in both learnings. He became the great Apostle of the Gentiles. By his zeal, his learning and his prudence, he laid the foundations of the Christian Church as it remains to the present day.

Paul adopted a few simple dogmas as the theory or skeleton around which he built up the wonderful structure of spiritual life and growth and moral power which so commended Christianity to the nations, and so elevated them in the scale of civilization and refinement. The principal of these dogmas were the atonement and the resurrection.

The necessity of atonement or conciliation of the Divine anger was so deeply rooted in the minds of all nations that no propounder of a new religion would

have been listened to for a moment who had not something of the kind to offer to sin-conscious mortals. Paul offered it in a way that secured the abolition of the old disgusting and expensive sacrifices, and, at the same time, an increased veneration for the founder of his religion. To meet the vast demands of propitiation for the sins of a world required an exaltation of the Person of this Founder above the state of ordinary humanity; though it cannot be justly said that Paul taught the essential Divinity of Christ in the modern sense of that term.

The resurrection was a Jewish dogma adopted not long before the Christian era. It supposed that men will rise out of their graves in bodily form, and thus have a renewed life. The Old Testament did not teach a future state. The Greeks had borrowed the idea of Hades and the Shades from the Egyptians, and the separate existence and indestructibility of the soul from the metempsychosis of the Brahmins. Refining upon these notions, they deduced the immateriality of the Spirit and the immortality of the soul. When the Greek philosophy became the basis of all learning among Christian scholars, this view was adopted in connection with that of the resurrection, and is, at present, the prevailing doctrine of the Church. But Paul, a good Grecian, was compelled to admit that the body which would reappear would be a "spiritual body," rather a contradiction in terms.

Whatever dogmas, from time to time, may have prevailed as matters of voluntary or compulsory belief, the great central truth taught by Christ and reiterated and enlarged by His Apostles—that true religion dwells in the heart by faith, and that it con-

sists of love—has never been entirely lost sight of, and has acted as a perpetual leaven, imparting moral life to the Church and to Christendom.

Meantime, human thought has not been at a stand-still. Whilst endless webs of fine-spun and ingenious theories have been woven by theologians and scholars, embracing the nature and mode of existence of God and all things, most of which have been consigned to the lumber garret of oblivion, thoughtful minds have continued to explore the hidden laws of our own spiritual nature, and the motives and forces by which it is moulded and swayed, and have bestowed profound study on human life and destiny. As a result we have a grand system of true spiritual philosophy by the light of which we may be unerringly guided to good and noble ends and to the formation of good and noble characters.

To this end, without giving ourselves up to childish superstitions, we may reverently study the more highly inspired portions of the sacred volume, especially the Psalms, the Proverbs, the Prophets and the New Testament, and also the standard works of religious instruction and piety. To this end, also, we may profitably study the works of the Wise and Good of all ages and nations, using at all times the lights of reason and conscience in judging what is good and rejecting what is bad or useless. Nor ought we to abandon the institutions of religions and the moral and religious teachings of the church. If we do not assent to all the theological dogmas which we hear, we can extract much of spiritual good; and we must remember that the mass of mankind have no other resource for edification and comfort. We should treat

their weaknesses with tenderness and their prejudices with respect. It would be worse than useless to fly in the face of the conscientious convictions and cherished hopes of those with whom it is our lot to live. We should only lose their friendship and respect without conferring upon them any benefit.

Much has been said of the efficacy of prayer. Those like Professor Tyndal, who considered the world to be governed by unchangeable laws, cannot conceive any advantage to arise from applications to the Supreme Being. But the effort made by the soul to lift itself up into close communion with the Almighty Spirit of Holiness and Purity has a purifying influence on the soul itself, repressive of the gross and animal nature, and of all pride and vain conceit, and attracting to it for the time being a portion of that sanctity which it adores. In this, undoubtedly, consists the true value of prayer. I would, by all means, urge the continuance of this elevating and purifying exercise in connection with the other means employed for the edification of the spiritual nature.

Pursuing the course indicated, with a sincere desire for spiritual and practical improvement, and a mind lifted up with a yearning for communion with that Divine Being who is, who must be, our loving Father (or he would not have created us), the soul will become purified and gloriously prepared for all the duties and trials of life and death, and for the unknown issue of the world to come.

My conclusion, then, is this: God is everywhere, and always the same. He forms and informs all things visible and invisible. His creative power has not ceased to operate, but is working now and will

always work by eternal laws. His spirit still inspires, and it has always inspired, elevated and spiritual souls with thoughts far above and beyond the reach of ordinary mortals. He breathes through their minds those Divine strains which seem like the far off harmony of the other worlds. But this is no greater display of His infinite and all-pervading energy than the growing of the blade of grass or the forming of the snowflake. It is for us to adore and love; to be humble and trustful; to be pure and good; to be just and loving and kind. It is for us to work and labor in our lot, producing sunshine and gladness wherever we go. It is for us to love our country and to sustain its institutions and laws; to conform as far as we can to the religious forms and customs which prevail and with which we can best sympathize, remembering that to most people those things are vital supports of their moral nature. It is for us to build up and not to pull down; to be a blessing in our day and not a curse; to seek truth wherever it is to be found, and to advocate it at all times when its advocacy will be tolerated, but not to allow our confidence in our opinions to interfere with our usefulness to others. Finally, it is for us, through all difficulties and temptations, to pursue an honorable, dignified, truthful and loving life, so that whenever our task is done, we may depart amidst the blessings of mankind and be remembered for our good deeds.

*This is my religion.*

July 4, 1876.

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